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FEDERAL REGISTER

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Codification Guide

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Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

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PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Defense

Effective upon publication in the FEDERAL REGISTER, subparagraph (40) is added to paragraph (a) of § 6.304 as set out below.

§ 6.304 Department of Defense.

(a) *Office of the Secretary.* * * *

(40) One Special and Confidential Assistant to the Assistant Secretary of Defense (Civil Defense).

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WARREN B. IRONS,
Executive Director.

[F.R. Doc. 61-10463; Filed, Nov. 1, 1961; 8:52 a.m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Peace Corps

Effective upon publication in the FEDERAL REGISTER, paragraph (k) of § 6.368 is amended as set out below.

§ 6.368 Peace Corps.

* * * * *

(k) The Associate Director, Office of Planning and Evaluation.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WARREN B. IRONS,
Executive Director.

[F.R. Doc. 61-10465; Filed, Nov. 1, 1961; 8:52 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter I—Farm Credit Administration

SUBCHAPTER F—BANKS FOR COOPERATIVES

PART 70—BANKS FOR COOPERATIVES GENERALLY

Cancellation and Retirement of Stock and Other Equities of Borrower in Liquidation or Dissolution

In order to supplement an amendment to the Farm Credit Act of 1933, as amended, made by section 2(3) of Public Law 87-343 (75 Stat. 758), Subpart—Capital Stock, Surplus, Reserves, of Part 70, Chapter I of Title 6 of the Code of Federal Regulations, is amended by adding § 70.165a, as follows:

§ 70.165a Cancellation and retirement of stock and other equities of borrower in liquidation or dissolution.

In the case of liquidation or dissolution of any present or former borrower from a bank for cooperatives, the bank may retire and cancel any capital stock or allocated surplus or contingency reserves or other equity interest in the bank owned by such borrower at the fair book value thereof, not exceeding par, as hereinafter indicated.

(a) The bank has reasonable assurance that the liquidation or dissolution is or soon will be completed and that the business of the borrower is not being continued in circumstances in which it would be appropriate and feasible for the successor to acquire and hold the interests of its predecessor in the bank.

(b) The retirement of stock and other equities of any such borrower would not unduly affect the financial position of the bank.

(c) Any such retirement shall be subject to authorization as follows:

(1) Whenever the total amount of equities to be retired in any one case is $5,000 or less the Executive or Loan Committee of the bank may approve the retirement when authorized to do so by the Board of Directors;

(2) Whenever the total amount of equities to be retired in any one case is in excess of $5,000 but does not exceed $25,000, retirement may be made only upon prior approval of the Board of Directors; and

(3) Whenever the total amount of equities to be retired in any one case is in excess of $25,000, retirement may be made only upon prior approval of the Board of Directors, subject to approval of the Farm Credit Administration.

(d) At the same time, corresponding shares of stock which the regional bank was required to purchase in the Central Bank shall also be retired.

(e) A report of any retirements made hereunder showing the name of the association and the amount of separate equities retired for each shall be forwarded to the Director of Cooperative Bank Service at the end of each quarter.

(Sec. 6, 47 Stat. 14, as amended; 12 U.S.C. 665. Supplements sec. 36, 48 Stat. 263, as amended by sec. 2(3), 75 Stat. 758; 12 U.S.C. 1134*l*(d))

HAROLD T. MASON,
Acting Governor,
Farm Credit Administration.

[F.R. Doc. 61-10428; Filed, Nov. 1, 1961; 8:46 a.m.]

Chapter III—Farmers Home Administration, Department of Agriculture

SUBCHAPTER A—GENERAL REGULATIONS

[FHA Instruction 403.1]

PART 305—VOLUNTARY DEBT ADJUSTMENT

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

[Administration Letters 447(440), 433(400)]

PART 390—ASSISTANCE IN THE GREAT PLAINS AREA

Revocation and Supersedure of Part

Subpart A, Part 390, Title 6, Code of Federal Regulations (21 F.R. 5978, 23 F.R. 637), is hereby revoked; Subpart B, Part 390, Title 6, Code of Federal Regulations (21 F.R. 5981), is superseded by a new Part 305 revised to read as follows:

Sec.
305.1 General.
305.2 Methods.
305.3 Processing applications for voluntary debt adjustment.

AUTHORITY: §§ 305.1 to 305.3 issued under sec. 4, 64 Stat. 100, secs. 337, 339, 75 Stat. 316, 318; 40 U.S.C. 442; 7 U.S.C. 1987, 1989; Order of Sec. of Agr., 19 F.R. 74, 22 F.R. 8188, 26 F.R. 7888, 8403.

§ 305.1 General.

(a) When the adjustment of debts appears necessary to establish a sound financial position and to carry on a sound farming operation, voluntary debt adjustment assistance will be provided in accordance with the provisions of this part to a farmer or rancher upon request to the County Supervisor, including applicants for loans from the Farmers Home Administration. However, assistance will not be given to any farmer or rancher in avoiding the payment of an obligation within his reasonable ability to pay. It is expected that adjustments will be made on the basis that each debtor will meet his obligations to the full extent of his ability to pay considering his assets, income, and the demands on his income.

(b) Debts owed to the Farmers Home Administration will not be adjusted pursuant to this part but will be considered for settlement in accordance with Parts 364 and 372 of this chapter.

§ 305.2 Methods.

After a determination is made that a debtor's financial situation and debt paying ability is such that adjustment of his debts is necessary, attempts to assist the debtor in adjusting his debts will be made along the following lines as the situation demands:

(a) *Rearrangement of payment terms.* If the debt is not in excess of the debtor's ability to pay over a reasonable period of time, an effort will be made to get the creditor(s) to extend the time for repayment so as to enable the debtor to

retire the debt in an orderly manner. This may require such changes as reamortization, rearrangement of payment dates, or suspension of payments during periods of low income. It may be desirable in some situations for a debtor to refinance his present indebtedness with other creditors in order to effect terms that can be met or to consolidate his debts.

(b) *Reduction of debts.* If, all debts considered, the debtor cannot be expected to pay his creditor(s) in a reasonable period of time, an amount which can be repaid will be determined by the County Supervisor and the applicant and, as needed, with the advise of the County Committee. An effort will then be made to get the creditor(s) to reduce the indebtedness in line with this determination, taking into consideration the priority of liens involved, the security for the debts, and other pertinent factors.

(c) *Other methods.* It may be necessary in some cases to reduce interest rates, to transfer to a creditor some property not needed in the farm business in exchange for a full or partial release from an obligation, or to work out various other arrangements with creditors. The most equitable method for all parties of interest should be chosen so long as it brings the total indebtedness within the debtor's ability to pay in an orderly manner.

(d) *Combination of methods.* The more complex cases may require a variety of methods or combinations of methods in accomplishing an adjustment which will be reasonable and equitable to all parties of interest.

§ 305.3 Processing applications for voluntary debt adjustment.

(a) Applications for voluntary debt adjustment will be made on Form FHA 410–1, "Application for FHA Services." The applicant will be required to give complete information concerning his assets, debts, farming or ranching operations, and any other information which has a bearing on his debt paying ability. This will be accomplished by the use of Form FHA 431–2, "Farm and Home Plan," plus any other documents and supplemental information as needed in the individual case.

(b) If the information developed as outlined in paragraph (a) of this section shows a need for an adjustment of debts, and a proposed method and amount of adjustment is determined, the information will be made known to the creditors involved who will be invited to make proposals for the adjustment of the debts they hold. This preliminary contact with creditors may be made by the debtor or the County Supervisor, depending on the circumstances in the case. If the proposals made in response to this contact are adequate for a reasonable and equitable adjustment, the proposals will be formalized into written agreements in accordance with paragraph (d) of this section. If the original proposals are not acceptable, additional negotiations with the individual creditors may be advisable.

(c) When a satisfactory adjustment cannot be reached in accordance with paragraph (b) of this section, it usually will be advisable to invite part or all of such creditors to attend a meeting with the debtor, the County Supervisor, and if determined advisable, the County Committee for the purpose of discussing the debtor's situation and attempting to arrive at appropriate adjustments. Any satisfactory arrangements reached at this meeting will be formalized into written agreements in accordance with paragraph (d) of this section.

(d) Each satisfactory agreement reached for the adjustment of a debt will be documented on Form FHA 440–11, "Debt Adjustment Agreement," and executed by the creditor and the debtor. Revisions will be made in Form FHA 440–11 when necessary to reflect the agreement reached between the creditor and the debtor. Any such revision will be initialed by both parties. Form FHA 440–11 will be prepared and executed in an original and two copies. The original will be delivered to the debtor, one copy will be delivered to the creditor, and the other copy will be filed in the County Office files.

Dated: October 27, 1961.

HOWARD BERTSCH,
Administrator,
Farmers Home Administration.

[F.R. Doc. 61–10458; Filed, Nov. 1, 1961; 8:51 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER G—DETERMINATION OF PROPORTIONATE SHARES

[Sugar Determination 855.9]

PART 855—MAINLAND CANE SUGAR AREA

Proportionate Shares for Farms; 1962 Crop

Pursuant to the provisions of section 302 of the Sugar Act of 1948, as amended (hereinafter referred to as "act"), the following determination is hereby issued:

§ 855.9 Proportionate shares for sugarcane farms in the mainland cane sugar area for the 1962 crop.

(a) *Definitions.* For the purpose of this section, the terms:

(1) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(2) "State Committee" means the persons in a State designated by the Secretary of Agriculture as the Agricultural Stabilization and Conservation State Committee, under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

(3) "County Committee" means the persons elected within a county as the county committee pursuant to regulations governing the selection and function of Agricultural Stabilization and Conservation county and community committees, under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

(4) "Producer" shall have the meaning set forth in section 101(k) of the act.

(5) "Operator" means the producer who controls and directs the operations on the farm and who bears the major portion of the risk of financial loss or the opportunity for financial gain resulting from such operations.

(6) "Farm" shall have the meaning set forth in Part 822 of this chapter.

(7) "Acreage" or "acres" means the area on which sugarcane is grown and marketed (or processed) for the extraction of sugar or liquid sugar, or which is harvested for seed or abandoned and classified as bona fide abandonment under procedure issued by the Agricultural Stabilization and Conservation Service.

(b) *Farm proportionate share.* The 1962-crop proportionate share for each sugarcane farm in the Mainland Cane Sugar Area, as constituted at the beginning of harvest of the 1962 crop on such farm, shall be the acreage of sugarcane thereon.

(c) *Credit for sugarcane acreage.* For possible use in establishing proportionate shares of subsequent crops, the subdivisions of any farm which is subdivided for the 1962-crop season shall be credited with the sugarcane acreage record of the crop years 1958 through 1961 of such farm by apportioning such record among the subdivisions on the basis of the cropland suitable for the production of sugarcane in such subdivisions and the farm. However, if the local County Committee determines that the use of the cropland relationship in any case is materially inconsistent with the acreage of sugarcane grown on any subdivision during the crop years 1958 through 1961 or is not representative of the sugarcane acreage growing on any subdivision, or if all persons concerned in the subdivision of such farm file a written request with the County Committee which is approved by the committee, such subdivisions shall be credited with the acreage of sugarcane grown within farm proportionate shares on each subdivision during such four crop years or the portions of the 1958–61 acreage record of the farm determined on the basis of the acreage of sugarcane growing on each subdivision.

(d) *Transfer of credit for sugarcane acreage.* For the purpose of establishing farm proportionate shares for subsequent crops, the sugarcane production record for any of the crop years 1958 through 1961 of any land removed from sugarcane production either because of transfer of such land by sale, lease or donation to any Federal, State or other agency or entity, having the right of eminent domain, or because of transfer of such land to such an agency or entity for use primarily for the production of sugarcane for experimental purposes, shall, upon application to the appropriate State Committee within three years from the date of such transfer, be added to the sugarcane production record for such crop years, if any, of

other land within the State owned or purchased by the owner of the land so transferred.

(e) *Eligibility for payment under the act.* The eligibility of any producer of sugarcane for payment under the act shall be subject to the following conditions:

(1) The number of share tenants or sharecroppers engaged in the production of sugarcane of the 1962 crop on the farm shall not be reduced below the number so engaged with respect to the previous crop, unless such reduction is approved by the State Committee. In considering such approval, the State Committee shall be guided by whether the reduction was the result of a voluntary action of the share tenant or sharecropper, or whether the reduction was beyond the control of the producer.

(2) The producer shall not have entered into any leasing or cropping agreement for the purpose of diverting to himself or any other producer any payments to which share tenants or sharecroppers would be entitled if their leasing or cropping agreements for the previous crop were in effect.

(3) The requirements of the act with respect to child labor and the requirements of the act and of the regulations issued pursuant thereto with respect to wage rates and, in the case of a processor-producer (a producer who is also a processor), prices paid for sugarcane shall have been met.

(f) *Filing application for payment.* Application for payments authorized under Title III of the act with respect to sugarcane planted on a farm for harvest during the 1962-crop season shall be made on Form SU-120 by a producer on the farm or his legal representative or heirs who must sign and file the form in the county office for the county where the farm or major portion thereof is located or with a representative of such office no later than June 30, 1964.

(g) *Determination of eligibility and basis for payment; and appeals for review thereof.* Compliance with the conditions prescribed by the act and regulations for any payment authorized under Title III of the act, the facts constituting the basis for any such payment, and the amount thereof, shall be determined by the County Committee. Determinations by the County Committee shall be made and decided in accordance with the applicable provisions of the act and regulations issued by the Secretary thereunder, and on the basis of the facts in the individual case. Within 15 days after the notice of such a determination is mailed to or otherwise made available to a producer, he may request the County Committee in writing to reconsider such determination. Within 5 days after all facts in the case have been considered, the County Committee shall notify him of its decision in writing. If the producer is dissatisfied with the decision of the County Committee, he may, within 15 days after the date of mailing of the decision to him, appeal in writing to the State Committee. In an appeal to the County Committee, or the State Committee, the producer or his representative shall be afforded the opportunity of appearing in person. The State Committee shall notify him in writing of its decision within 5 days after all facts in the case have been considered. If the producer is dissatisfied with the decision of the State Committee, he may, within 15 days after the notice of the decision is forwarded to or otherwise made available to him, request the Secretary to review the decision of the State Committee. The decision of the Secretary shall be final. The procedures applicable to claims for unpaid wages are provided for under regulations pertaining thereto, as issued by the Secretary.

(h) *Obtaining information regarding eligibility for payment.* Where it is necessary to obtain information to assist the County Committee in determining compliance with the conditions prescribed by the act and regulations for any payment authorized under Title III of the act, the facts constituting the basis for any such payment or the amount thereof, or to assist the State Committee or the Secretary in reviewing, upon appeal, any such determination by the County Committee, any such information with respect to acreage or compliance shall be obtained to the extent possible as provided in the applicable provisions of Part 718 of Chapter VII of this title (24 F.R. 4223), as amended. In the absence of a provision in such Part 718 for obtaining any such information, any employee of the County Committee or employees of the State Committee designated respectively by the County Office Manager or by the State Administrative Officer to be qualified to perform such a duty may obtain such information. If the operator, or his representative, of any farm with respect to which application is made for any payment authorized under Title III of the act prevents the obtaining of the information necessary to determine compliance with the conditions for any such payment, the facts constituting the basis of any such payment or the amount thereof, as provided in this paragraph, the conditions prescribed by the act and regulations for any such payment shall be deemed not to have been met until such farm operator or his representative permits such information to be obtained.

STATEMENT OF BASES AND CONSIDERATIONS

Sugar Act Requirements. As a condition for payment to producers, section 301(b) of the act provides that there shall not have been marketed (or processed), except for livestock feed or for the production of livestock feed, an amount of sugarcane grown on the farm and used for the production of sugar or liquid sugar in excess of the proportionate share for the farm, as determined by the Secretary pursuant to section 302 of the act.

Section 302(a) of the act provides that the amount of sugar with respect to which payment may be made shall be the amount of sugar commercially recoverable from the sugarcane grown on the farm and marketed (or processed by the producer) for sugar or liquid sugar not in excess of the proportionate share for the farm.

Section 302(b) provides that in determining the proportionate share for a farm, the Secretary may take into consideration the past production on the farm of sugarcane marketed (or processed) within the proportionate share for the extraction of sugar or liquid sugar and the ability to produce such sugarcane, and that the Secretary shall, insofar as practicable, protect the interests of new producers and small producers, and the interests of producers who are cash tenants, share tenants, or sharecroppers, and of producers in any local producing area whose past production has been adversely, seriously and generally affected by drought, flood, storm, freeze, disease, insects, or other similar abnormal and uncontrollable conditions.

General. Pursuant to the foregoing provisions of the act, proportionate shares for sugarcane farms are established for each crop for use in fixing the amounts of sugar for payment on individual farms. Restrictive proportionate shares are required in any area for a given crop when the indicated production will be greater than the quantity needed to enable the area to meet the quota (and provide a normal carryover inventory) as estimated by the Secretary for such area for the calendar year during which the larger part of the sugar from such crop normally would be marketed.

No restrictions under the act were applicable to sugarcane acreage in this area during World War II or during the post-war period until 1954. Acreage restrictions were applicable to each of the crops of 1954 through 1959, although such restrictions were modified on March 4, 1959, to permit the harvesting of all 1959-crop acreages of sugarcane then growing. Neither the 1960 nor the 1961 crop was restricted.

Adverse weather conditions resulted in lower than anticipated sugar production from the 1958, 1959, and 1960 crops. This situation, together with relatively large increases in the annual sugar marketing quotas because of deficits in marketings from Puerto Rico and Hawaii, resulted in the area falling short of meeting its augmented quota for either 1959 or 1960. Furthermore, the stocks of sugar at the beginning of this year were undesirably low.

It is too early to reliably estimate the amount of sugar that will be produced from the unrestricted 1961 crop. However, if the yield per acre equals the average yield for the 1955–59 period, the area will not meet its 1961 quota including deficit reallocations. Moreover, even a yield per acre equivalent to the highest on record would not result in an appreciable increase in stocks on January 1, 1962.

Since the date of announcement of non-restrictive acreages for the 1960 crop, considerable expansion in sugarcan acreage and processing facilities has occurred in the Mainland Cane Sugar Area, principally in Florida, and further expansion is planned. Two additional mills in Florida are scheduled to begin operating during the coming crop season but will process consider-

ably below capacity. It is understood that the operators of these mills plan to have sufficient cane to greatly increase processings in the fall of 1962. In addition, two larger mills will begin processing sugarcane in the fall of 1962. Reports indicate that consideration is being given to the erection of two more mills, but even if these are erected, they probably could not be ready to process cane in the fall of 1962. This expansion is occurring despite recognition by those involved that substantial cutbacks in acreage might be necessary in future years. The possibility of such cutbacks has been set forth in regulations issued by the Department for the last two crops and in correspondence with many of those engaged in the expansion. Indications point to a 1962-crop planted acreage in Florida about 65 percent greater than for the last restricted crop (1959) and in Louisiana about 14 percent greater.

In response to requests from the Department for views and recommendations on the 1962 crop, representatives of growers and processors in the Mainland Cane Sugar Area, including the spokesman for growers producing about 95 percent of the Louisiana crop and for all of the processors in that State, recommended unanimously that the 1962 crop be unrestricted. They also expressed the view that the customary informal public hearing would be unnecessary. Generally, it was the view of those contacted that unrestricted acreage for the 1962 crop would not result in excessive inventories on January 1, 1963.

Based on the best information available on acreages that will likely be devoted to sugarcane for the 1962 crop if the crop is not restricted and using recent sugar yields per acre, 1962-crop sugar production could range between 775,000 and 925,000 tons. Thus, considering the probable stocks on January 1, 1962, and the 1962 marketing opportunities of the area under the terms of the present Sugar Act, the stocks on January 1, 1963, could range from 50,000 to 220,000 tons and the effective inventory on the same date could range from 225,000 to 460,000 tons. If the quota provisions of the present act are continued beyond June 30, 1962, favorable crops would result in a serious over-supply prospect and drastic cutbacks in acreage would be necessary for the 1963 crop. Representatives of the industry in Florida and Louisiana recognized and considered these possibilities before recommending that the 1962 crop be unrestricted. It is believed that those who are planning expansion of acreage, as well as those planning to build new mills, recognize the risks involved and will not take irrevocable steps in this direction without considering fully the possible need for future adjustments.

Determination. This determination provides that in the Mainland Cane Sugar Area the 1962-crop proportionate share for each farm, as constituted at the beginning of harvest of the 1962 crop on such farm, shall be the acreage of sugarcane thereon which is grown and marketed (or processed) for the extraction of sugar or liquid sugar, or which is harvested for seed or is abandoned and classified as bona fide abandonment. In making this determination, consideration has been given to the recommendations of the industry and to production and marketing prospects.

The provisions of this determination with respect to (1) acreage removed from sugarcane production because of transfer to any agency or entity having the right of eminent domain, (2) the division or combination of acreage records for historical purposes, and (3) certain general matters, are substantially the same as those included in the 1961-crop determination.

Accordingly, I hereby find and conclude that the aforestated determination will effectuate the applicable provisions of the act.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U.S.C. 1131, 1132)

Effective date: Date of publication.

Signed at Washington, D.C., on October 30, 1961.

CHARLES S. MURPHY,
Acting Secretary.

[F.R. Doc. 61-10431; Filed, Nov. 1, 1961; 8:47 a.m.]

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Sugar Determination 864.8]

PART 864—WAGES; SUGARCANE; LOUISIANA

Fair and Reasonable Wage Rates

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation, and consideration of the evidence obtained at the public hearing held in Thibodaux, Louisiana, on August 2, 1961, the following determination is hereby issued:

§ 864.8 Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in Louisiana.

(a) *Requirements.* A producer of sugarcane in Louisiana shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in production, cultivation, or harvesting work shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the worker, but not less than the following:

(i) *For work performed on a time or piecework basis.*

Class of Worker or Operation	*Rate*
Harvest work:	*per hour*
Cutters, toppers, strippers, and scrapers behind loaders	$0.70
Loaders, spotters, ropemen, grabmen, and teamsters	.75
Cutters and loaders, pilers, and hoist operators	.70
Tractor drivers, truck drivers, and harvester bottom blade operators	.80
Operators of mechanical loading or harvesting equipment	.85
All other harvesting workers	.65
Cutting top and bottom:	*per ton*
Large barrel varieties [1]	$1.10
Small barrel varieties [2]	1.30
Production and cultivation work:	*Rate per hour*
Tractor drivers	$0.70
All other production and cultivation workers	.60

[1] Large barrel varieties: Co. 290; C.P. 29/103; C.P. 29/116; C.P. 32/243; C.P. 36/13; C.P. 36/105; C.P. 29/120; C.P. 43/47; C.P. 44/101; C.P. 44/155; N. Co. 310; C.P. 47/193; C.P. 48/103; and C.P. 52/68.

[2] Small barrel varieties: All other.

(ii) *Workers between 14 and 16 years of age when employed on a time basis.* For workers between 14 and 16 years of age, the wage rate per hour (maximum employment is 8 hours per day for such workers without deduction from Sugar Act payments to the producer) shall be not less than three-fourths of the applicable hourly wage rates for adults provided under subdivision (i) of this subparagraph.

(iii) *Other piecework rates.* For any piecework performed on a unit basis for which a rate is not specified in subdivision (i) of this subparagraph, the rate shall be as agreed upon between the producer and worker: *Provided,* That the hourly rate of earnings of each worker employed on piecework during each pay period (such pay period not to be in excess of two weeks), shall average for the time worked at piecework rates during such pay period not less than the applicable hourly rate prescribed in subdivisions (i) and (ii) of this subparagraph.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, driver of animals, or any other class of worker to report to a place other than the field, such as an assembly point or a tractor shed, located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to an assembly point located on the farm, or from a central recruiting point to the field, is not compensable working time.

(3) *Equipment necessary to perform work assignment.* The producer shall furnish without cost to the worker any equipment required in the performance of any work assignment. However, the worker may be charged for the cost of such equipment in the event of its loss or destruction through negligence of the worker. Equipment includes, but is not limited to hand and mechanical tools

and special wearing apparel, such as boots and raincoats, required to discharge the work assignment.

(b) *Workers not covered.* The requirements of this section are not applicable to workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugarcane, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

(c) *Proof of compliance.* The producer shall furnish, upon request, to the appropriate Agricultural Stabilization and Conservation County Committee acceptable and adequate proof which satisfies the Committee that all workers have been paid in accordance with the requirements of this section.

(d) *Subterfuge.* The producer shall not reduce the wage rates to workers below those determined in accordance with the requirements in this section through any subterfuge or device whatsoever.

(e) *Claim for unpaid wages.* Any person who believes he has not been paid in accordance with this section may file a wage claim with the local County Agricultural Stabilization and Conservation Committee against the producer on whose farm the work was performed. Detailed instructions and wage claim forms are available at that office. Such claim must be filed within two years from the date the work with respect to which the claim is made was performed. Detailed instructions and wage claim forms are available at the local County ASCS office. Upon receipt of a wage claim the County office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The County ASC Committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the State Agricultural Stabilization and Conservation Committee, 528 Monroe Street, Alexandria, Louisiana, which shall likewise consider the facts and notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the State ASC Committee is not acceptable, either party may file an appeal with the Director of the Sugar Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington 25, D.C. All such appeals shall be filed within 15 days after receipt of the recommended settlement from the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Director of the Sugar Division, his decision shall be binding on all parties insofar as payments under the act are concerned.

(f) *Effective period.* The provisions of this section applicable to harvest work shall become effective on the date of publication of this section in the FEDERAL REGISTER and the provision for production and cultivation work shall become effective on January 1, 1962, and the provisions of this section shall remain in effect until amended, superseded, or terminated.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination establishes fair and reasonable wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of sugarcane in Louisiana as one of the conditions with which producers must comply to be eligible for payments under the act.

(b) *Requirements of the act and standards employed.* Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane with respect to which an application for payment is made shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determinations the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and by-products, income from sugarcane, and cost of production), and the differences in conditions among various producing areas.

(c) *Wage determination.* This determination continues the requirements of the prior determination except that the minimum time wage rates for all classes of workers are increased 5 cents per hour.

A public hearing was held in Thibodaux, Louisiana, on August 2, 1961, at which interested persons were afforded the opportunity to testify with respect to fair and reasonable wage rates for work performed during the 1961 harvest season and for production and cultivation work during the calendar year 1962. Testimony was presented by an economist of the Louisiana State University appearing at the request of the American Sugar Cane League; by the Chairman of the Wage and Employee Relations Committee of the American Sugar Cane League; and by the Chairman of the Louisiana Farm Bureau Federation Sugar Advisory Committee. No testimony was presented on behalf of sugarcane field workers.

The Louisiana State University representative presented the costs and returns of producing sugarcane for the period 1937 through 1959. He stated that 1959 was an unfavorable year; that total returns for large-scale farms averaged $173 per acre in 1959 as compared to $193 per acre for the 1954–58 period; that return on investment averaged 2.2 percent in 1959 as compared to 5.7 percent for the 1954–58 period; that labor costs had not decreased in proportion to the reduction in the amount of labor required in producing sugarcane; and that for the period 1957–59 labor costs accounted for 48 percent of the total direct costs of producing sugarcane.

The witness for the American Sugar Cane League recommended that there be no increase in wage rates and that the present determination be continued without change. He stated that while many workers are paid wage rates higher than the minimum this does not indicate that the minimum rates prescribed in the past have been too low; that average results of the 1960 crop, based on general information, were better than for 1959 but not as good as for the 1958 crop, and that 1961 crop prospects appear good at this time; and that the present raw sugar price and future market quotations did not present an optimistic picture. He pointed out that the primary reasons for the decrease in the number of man-hours required to produce a ton of sugarcane are mechanization, chemical weed and grass control, improved fertilization, improved cane varieties, and piecework employment on some farms; and that it has been through such reduction in man-hour requirements that the Louisiana sugarcane producers have been able to pay wage rates 67 percent above those in 1947.

The representative of the Louisiana Farm Bureau recommended no change in wage rates. The witness stated that after studying the data at their disposal, which included the cost studies of the Louisiana State University, personal farm operators costs, and anticipated returns per ton of sugarcane of the 1961 crop, he believed that there was no evidence that would support an increase in wage rates. The witness said that mosaic disease is a real threat, that 79 percent of the cane acreage is planted in varieties highly susceptible to this disease, and that this has caused a substantial increase in production costs.

Consideration has been given to the recommendations presented at the hearing, to the returns, costs, and profits of producing sugarcane obtained by field survey in a prior year and recast to reflect prospective conditions for the 1961 crop, and to other pertinent factors.

An analysis of returns, costs, and profits of sugarcane production and other relevant factors indicates that the increase in the wage rates provided herein are fair and reasonable and within the ability of producers to pay. As pointed out by a witness at the hearing man-hour requirements per ton of sugarcane have decreased during the past decade as a result of technological improvements in sugarcane production. During this period producers voluntarily have paid higher wages to fieldworkers and minimum wage rates have been increased periodically. The wage rates of this determination, which compare favorably with general farm wage rates in Louisiana, also recognize improvements in labor productivity.

The increase of 5 cents per hour results in minimum rates ranging from 60 cents per hour for unskilled workers to 85 cents for operators of mechanical loading or harvesting equipment. The increase in minimum rates for all classes of workers averages approximately 8 percent as compared to the rates which have been effective for the past two years. However, since some workers are

employed on a piecework basis earning more than the minimum and others have been paid on an hourly basis at rates higher than the minimum, it is estimated that the increase in the average hourly earnings may average somewhat less than 8 percent.

Although this determination is on a continuing basis, the Department, in order to keep informed on current conditions in the area, will conduct the customary investigations, and will afford interested persons the opportunity to present testimony at a hearing to be held annually.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies sec. 301, Stat. 929, as amended; 7 U.S.C. 1131)

Signed at Washington, D.C., on October 30, 1961.

CHARLES S. MURPHY,
Acting Secretary.

[F.R. Doc. 61-10433; Filed, Nov. 1, 1961; 8:47 a.m.]

SUBCHAPTER I—DETERMINATION OF PRICES

[Sugar Determination 873.14]

PART 873—SUGARCANE; FLORIDA

Fair and Reasonable Prices; 1961 Crop

Pursuant to the provisions of section 301(c)(2) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and due consideration of the evidence presented at the public hearing held in Clewiston, Florida, on May 10, 1961, the following determination is hereby issued:

§ 873.14 Fair and reasonable prices for the 1961 crop of Florida sugarcane.

A producer of sugarcane in Florida who is also a processor of sugarcane (herein referred to as "processor"), shall have paid, or contracted to pay, for sugarcane of the 1961 crop grown by other producers and processed by him, or shall have processed sugarcane of other producers under a toll agreement, in accordance with the following requirements.

(a) *Definitions.* For the purpose of this section, the term:

(1) "Price of raw sugar" means the daily spot quotation of raw sugar of the New York Coffee and Sugar Exchange No. 7 domestic contract, except that if the Director of the Sugar Division, Agricultural Stabilization and Conservation Service, determines that such price does not reflect the true market value of raw sugar, because of inadequate volume or other factors, he may designate the price to be effective under this section which he determines will reflect the true market value of raw sugar.

(2) "Season's average price" means the weighted average price of raw sugar for the months in which 1961-crop raw sugar is marketed, such average price to be determined by weighting the simple average of the daily prices of raw sugar for each month in which sugar is sold by the quantity of 1961-crop raw sugar or raw sugar equivalent sold by or for the account of the processor during each corresponding month.

(3) "Raw sugar" means raw sugar, 96° basis.

(4) "Net sugarcane" means the gross weight of the sugarcane as delivered by a producer to a processor minus a deduction for trash of 4 percent.

(5) "Standard sugarcane" means sugarcane containing 12.5 percent sucrose in the normal juice.

(6) "Average percent sucrose in normal juice" means the percentage determined by multiplying the season's average percent sucrose in crusher juice of the producer's sugarcane by (i) the ratio of the average normal juice sucrose for all Florida mills to the average crusher juice sucrose for all such mills during the most recent 5 years; or (ii) the 1961 crop ratio of the average normal juice sucrose to the average crusher juice sucrose at the processor's mill. In applying method (ii) above, average crusher juice sucrose shall be obtained by direct analysis; average normal juice sucrose shall be computed by multiplying the average dilute juice purity by the average normal juice Brix; and normal juice Brix shall be determined by multiplying the average crusher juice Brix by a dry milling factor, obtained by running dry milling tests supervised by representatives of the Sugar Division. The processor shall elect the method to be used in determining the average normal juice sucrose and shall uniformly use the method selected throughout the crop.

(7) "Salvage sugarcane" means sugarcane containing less than 9.5 percent sucrose in the normal juice.

(8) "State Office" means the Florida State Agricultural Stabilization and Conservation Service Office, Gainesville, Florida.

(9) "State Committee" means the Florida State Agricultural Stabilization and Conservation Committee.

(b) *Basic price for purchased sugarcane.* (1) The basic price for sugarcane purchased by a processor from producers shall be not less than $1.07 per ton of standard sugarcane for each one cent per pound of the season's average price of raw sugar.

(2) Net sugarcane (except salvage sugarcane) shall be converted to standard sugarcane by multiplying the total quantity of net sugarcane delivered by each producer by the applicable quality factor in accordance with the following table:

Average percent sucrose in normal juice:	*Standard sugarcane quality factor* [1]
9.5	.70
10.0	.75
10.5	.80
11.0	.85
11.5	.90
12.0	.95
12.5	1.00
13.0	1.05
13.5	1.10
14.0	1.15
14.5	1.20
15.0	1.25
15.5	1.30

[1] The quality factor for sugarcane of intermediate percentages of sucrose in normal juice shall be interpolated and for sugarcane having more than 15.5 percent sucrose in the normal juice shall be computed in proportion to the immediately preceding interval.

(3) *Molasses payment.* The processor shall pay to the producer for each ton of net sugarcane ground an amount equal to the product of 5.4 gallons times one-half of the excess above 4.75 cents per gallon of the weighted average net sales price per gallon of blackstrap or final molasses, f.o.b. mill tanks, sold during the 12-month period ending May 31, 1962: *Provided,* That if the processor sells molasses for his own account and for the account of another processor the weighted average net sales price of molasses for all processors involved shall for the purposes of this paragraph be determined on the basis of the prices at which all molasses was sold by such processor during such 12-month period.

(4) *General.* (i) The price for sugarcane specified in this paragraph is applicable to sugarcane loaded on carts or trucks at the farm, or, if sugarcane is transported by railroad, loaded in railroad cars at the railroad siding nearest the farm: *Provided,* That if the producer transports sugarcane to the mill from a distance 16 miles or less the processor shall pay to the producer for transporting such sugarcane an amount equal to the cost of transporting sugarcane (based on gross weight) by railroad or by other common carrier, whichever customarily is used by the processor: *Provided further,* That if the producer transports sugarcane to the mill from a distance greater than 16 miles the processor shall pay to the producer 80 cents per gross ton for transporting such sugarcane or if the processor transports sugarcane for the producer a charge of 5 cents per ton mile for each mile in excess of 16 miles may be made by the processor.

(ii) Deductions for frozen sugarcane, fiber content determinations and deductions, definitions of delivery schedules and similar specifications employed in connection with the purchase of 1961 crop sugarcane shall be as agreed upon between the producer and the processor.

(iii) Nothing in subdivision (ii) of this subparagraph shall be construed as prohibiting modification of customs and practices which may be necessary because of unusual circumstances, any such modification to be reported in writing by the processor to the State Office.

(iv) In the event a general freeze causes abnormally low recoveries of raw sugar by a processor in relation to the sucrose test of the sugarcane, payment for such sugarcane may be made as agreed upon between the producer and the processor subject to the written approval of the State Office upon a determination by the State Committee that the payment is fair and reasonable.

(v) The processor shall submit to the State Office for approval: (1) A statement setting forth the weighted average price of raw sugar upon which settlements with producers are based; (2) a statement setting forth the gross proceeds and the handling and delivery

expenses deducted in arriving at the weighted average net sales price of blackstrap molasses; and

(3) A statement prior to the start of grinding or within 10 days after the date of publication of this determination in the FEDERAL REGISTER whichever is later, specifying the method to be used in determining the average percent sucrose in normal juice.

(c) *Salvage sugarcane.* The price for salvage sugarcane shall be as agreed upon between the processor and the producer, subject to the approval of the State Office.

(d) *Toll agreements.* The rate for processing sugarcane produced by a processor and processed under a toll agreement by another processor shall be the rate they agree upon.

(e) *Subterfuge.* The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this section through any subterfuge or device whatsoever.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination establishes the fair and reasonable rate requirements which must be met, as one of the conditions for payment under the act, by a producer who processes sugarcane of the 1961 crop grown by other producers.

(b) *Requirements of the act.* Section 301(c)(2) of the act provides as a condition for payment, that the producer on the farm who is also directly or indirectly a processor of sugarcane, as may be determined by the Secretary, shall have paid, or contracted to pay under either purchase or toll agreements, for sugarcane grown by other producers and processed by him at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing.

(c) *1961 price determination.* This determination continues the provisions of the 1960 crop determination, except that the price of raw sugar to be used in computing settlements with producers for sugarcane is the daily spot quotation for raw sugar deliverable under the New York Coffee and Sugar Exchange No. 7 domestic contract (bulk sugar) without adjustment for a bag allowance; where one processor markets molasses for himself and for another processor, the weighed average of the combined sales prices of all molasses sold by the processor during the 12-month period ending May 31 shall be used by each processor as the basis for computing the molasses payment to producers; the molasses payment is to be based on 5.4 gallons of blackstrap molasses instead of 5.6 gallons, reflecting the most recent 5-year average recovery; and where sugarcane is transported a distance greater than 16 miles the processor may require the producer to bear a part of the transportation cost.

A public hearing was held in Clewiston, Florida, on May 10, 1961, at which interested parties were afforded an opportunity to testify with respect to fair and reasonable prices for the 1961 crop of sugarcane. Representatives of processors and a representative of producers testified and recommended that the major provisions of the 1960 crop determination remain unchanged for the 1961 crop. A processor representative stated that commencing with the 1961 crop the raw sugar delivered to the refinery by his company would be priced on the basis of the domestic spot price quotations for bulk sugar, and he recommended that the same price basis be used in making settlements with producers for sugarcane. The representatives of two processors reviewed their arrangement for marketing molasses whereby one processor sells the molasses production of both processing companies. Both of the representatives indicated that under such circumstances it would be equitable to base the molasses payment to be made to producers by each processor upon the weighted average net sales price of all molasses sold by the processor during the 12-month period ending May 31.

Consideration has been given to the recommendations presented at the hearing, and to other pertinent information. The comparative returns, costs, and profits of producing and processing sugarcane in Florida, obtained through field survey for a recent year, have been recast in terms of prospective price and production conditions for the 1961 crop. Analysis of these data indicates that the provisions of this determination will provide an equitable sharing of total returns from sugar and molasses between producers and processors based on their sharing of costs.

The recommendation that the daily spot price quotations for raw sugar deliverable under the New York Coffee and Sugar Exchange No. 7 domestic contract (bulk sugar) be used for computing the average price of raw sugar on which settlements for sugarcane are based has been adopted. Prior determinations required the use of spot price quotations of the No. 6 domestic contract applicable to bagged sugar. However, this contract is no longer in use and price quotations thereunder were discontinued as of February 1, 1961.

Prior determinations have provided that the processor bear the costs of transporting sugarcane from the farm, or from the railroad siding nearest the farm if transported by railroad, to the mill. However, new sugar mills have been constructed and new producers are engaging in the production of sugarcane, some of whom are located at distances in excess of 16 miles from the mill, the greatest distance which sugarcane has heretofore been transported for the account of the processor. To enable these new producers to have a market for their sugarcane and to avoid excessive transportation cost to the processor where the farm is located a considerable distance from the mill, it is deemed equitable to permit the processor to limit his responsibility for transportation cost. Thus, the processor who transports sugarcane for the producer may charge the producer 5 cents per gross ton for each mile in excess of 16 miles, or if the producer transports sugarcane to the mill for a distance greater than 16 miles, the total cost which the processor is required to bear is 80 cents per gross ton of sugarcane.

During the past several years one processor has marketed molasses for his own account and also for the account of another processor. The arrangements between these processors in relation to the requirement of the fair price determinations have resulted in one of the processors being unable to make the final molasses payment to producers immediately after the end of the marketing period. The provision relating to the molasses payment is modified in accordance with the suggestions made at the hearing and will enable the processor to make payment to producers somewhat sooner after the end of the marketing period than heretofore.

On the basis of examination of all the pertinent factors, the changes in this determination will result in an equitable sharing of proceeds and the provisions of this determination are deemed to be fair and reasonable.

Accordingly, I hereby find and conclude that the foregoing price determination will effectuate the price provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies sec. 301, 61 Stat. 929; 7 U.S.C. 1131)

Signed at Washington, D.C., on October 30, 1961.

CHARLES S. MURPHY,
Acting Secretary.

[F.R. Doc. 61-10432; Filed, Nov. 1, 1961; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Regulatory Docket No. 876; Amdt. 358]

PART 507—AIRWORTHINESS DIRECTIVES

De Havilland Heron Model 114 Aircraft

A proposal to amend Part 507 of the Regulations of the Administrator to include an airworthiness directive requiring periodic inspections for cracking of the wing rear spar web on De Havilland Heron Model 114 aircraft without Modification No. 1454 was published in 26 F.R. 8597.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

DE HAVILLAND. Applies to all Heron Model 114 aircraft without Modification No. 1454.

Compliance required as indicated.

(a) Cases have occurred of cracking of the wing rear false spar web adjacent to the wing-to-fuselage attachment P/N 14W 253/4.

To preclude failure of the spar, an X-ray or visual inspection for cracks must be conducted in accordance with De Havilland Technical News Sheet CT(114) No. W. 10 Issue 2, within the next 250 hours' time in service after the effective date of this directive and at each 600 hours' time in service thereafter. If cracks are found, repair in accordance with De Havilland Drawing RD 14W 224, Issue 4, or subsequent, within the time in service given in paragraphs (1), (2), and (3).

(1) Cracks less than ½ inch in length must be repaired at the next wing removal and the inspection in (a) must be made every 600 hours' time in service in the interim between the inspection and the wing removal.

(2) Cracks of ½ inch to 1½ inches in length must be repaired within 300 hours' time in service after the inspection.

(3) Cracks exceeding 1½ inches in length must be repaired within the next 150 hours' time in service after the inspection.

(b) The special inspection in (a) is no longer required when the repair per Drawing RD 14W 224, Issue 4, or subsequent, has been incorporated.

(De Havilland Technical News Sheet CT (114) No. W. 10 Issue 2 dated July 24, 1961, covers this subject.)

This amendment shall become effective December 4, 1961.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on October 26, 1961.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 61-10444; Filed, Nov. 1, 1961; 8:49 a.m.]

[Regulatory Docket No. 944; Amdt. 359]

PART 507—AIRWORTHINESS DIRECTIVES

Mooney M-20, M-20A, and M-20B Aircraft

Failure of the copper fuel and oil pressure gage lines on Mooney M-20, M-20A, and M-20B aircraft has occurred. Since this creates a potential fire hazard which can occur on other aircraft of the same type design which have not previously been modified, it is necessary to require replacement of the copper lines with flexible hose.

As a situation exists which demands immediate action in the interest of safety, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

MOONEY. Applies to the M-20, M-20A, and M-20B aircraft, Serial Numbers 1001 through 1875.

Compliance required within 25 hours' time in service after the effective date of this AD unless already accomplished.

To prevent failures of the fuel and oil pressure gage lines in the accessory compartment, the following replacement is required:

Replace the copper fuel and oil pressure gage lines from the firewall to the engine pickup location with flexible hose in accordance with Mooney Service Letter 20-82A or replace with other FAA approved equivalent lines or fittings.

(Mooney Service Letter 20-82A covers this same subject.)

This amendment shall become effective November 2, 1961.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on October 26, 1961.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 61-10445; Filed, Nov. 1, 1961; 8:49 a.m.]

[Regulatory Docket No. 945; Amdt. 360]

PART 507—AIRWORTHINESS DIRECTIVES

Vickers Viscount 745D and 810 Series Aircraft

Amendment 340, 26 F.R. 8935, required compliance with the provisions of paragraph (f)(2) no later than 30 days after the effective date of the AD for aircraft having accumulated 16,000 or more flights at 5.5 p.s.i. on the fuselage skin overlap joints on Vickers Viscount 745D and 810 Series aircraft. However, the applicable PTL upon which the amendment was based allows 16,800 flights at 5.5 p.s.i. instead of the 16,000 flights prescribed in Amendment 340, 26 F.R. 8935. Subsequent evaluation indicates that it is not necessary to require compliance at an interval which is more restrictive than that contained in the PTL and therefore paragraph (f)(2) of Amendment 340 is being revised accordingly.

Since this provides a relaxation and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment will become effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is amended as follows:

Amendment 340 (26 F.R. 8935) Vickers Viscount 745D and 810 Series aircraft is amended by revising paragraph (f)(2) as follows:

(2) Fuselage Skin Overlap Joints—Compliance required as indicated in PTL 221 Issue 2 or 94 Issue 2, as applicable, with incorporation of Modification D.2990 (a) or (b) (745D aircraft) or Modification FG.1783 (810 aircraft) required no later than 30 days after the effective date of this AD for aircraft having accumulated 11,000 or more flights at 6.5 p.s.i., or 16,800 or more flights at 5.5 p.s.i., or 30,000 or more flights at 4.5 p.s.i.

This amendment shall become effective November 2, 1961.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on October 26, 1961.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 61-10446; Filed, Nov. 1, 1961; 8:49 a.m.]

[Regulatory Docket No. 946; Amdt. 361]

PART 507—AIRWORTHINESS DIRECTIVES

Bell Model 47 Series Helicopters

The incorrect installation of the main rotor pitch link rod end bearing on a Bell Model 47G-2 helicopter resulted in loss of the ball bearings and subsequent loss of main rotor control. To preclude the possibility of rod end bearing failures on other Bell Model 47 Series helicopters, an airworthiness directive requiring a one-time only inspection is necessary.

As a situation exists which demands immediate action in the interest of safety, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days after date of publication in the FEDERAL REGISTER.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

BELL. Applies to all Model 47 Series helicopters.

Compliance required as indicated.

To preclude failure of the main rotor pitch link rod end bearing P/N RE4F7 which causes loss of main rotor control, the following one-time only inspection is required to determine that the bearing is correctly installed.

(a) Within the next 10 hours' time in service after the effective date of this AD, on all Model 47 Series helicopters, inspect the main rotor control pitch link located between the stabilizer bar mixing lever and the main rotor blade control horn to see that the rod end bearing sides are parallel to the clevis slot. These surfaces must be adjusted parallel to prevent binding of the rod end bearing at extreme ends of travel, as specified, in all applicable model maintenance manuals.

(b) Within the next 10 hours' time in service after the effective date of this AD, inspect all Models 47D, 47D-1, 47H-1, 47G, 47G-2, and 47J helicopters equipped with Fafnir P/N RE4F7 rod end bearing as follows:

(1) Remove the RE4F7 rod end bearing in accordance with the applicable maintenance manual and visually inspect for obvious damage or defect of the outer race such as nicks and gouges adjacent to the shield, looseness, roughness, distortion or kinks in bearing shields,

(2) If any damage or defect is found, replace the bearing prior to further flight.

(3) If no damage or defect is found, the bearing may be reinstalled.

(4) The installation of the bearings under subparagraphs (2) or (3) shall be made in accordance with the applicable maintenance manual making positive that requirements of paragraph (a) are followed.

(c) Helicopters listed in paragraph (b) that are not equipped with the Fafnir P/N RE4F7 bearings are equipped with Bell P/N

47-140-241-3 rod end bearings. These bearings are of a different make and only require the inspection called for in paragraph (a).

(Bell Service Instruction 345 SI covers this same subject for the models listed under (b).)

This amendment shall become effective November 7, 1961.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on October 26, 1961.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 61-10447; Filed, Nov. 1, 1961; 8:49 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6577]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Taxation of Amounts Received Under Family Income Riders

Correction

In F.R. Doc. 61-10287, appearing at page 10127 of the issue for Saturday, October 28, 1961, the date in § 1.101-4(h)(4) reading "October 20, 1961" should read "October 28, 1961".

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER A—REGULATIONS

PART 601—SHOE AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to section 5 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, as amended; 29 U.S.C. 205) and paragraph (C) of proviso (1) of subsection 6(c) of the aforementioned Act as amended by the Fair Labor Standards Amendments of 1961 (sec. 5(c), Public Law 87-30), the Secretary of Labor by Administrative Order No. 558 (26 F.R. 7706) appointed and convened Review Committee No. 2-D, and referred to it and duly noticed a hearing on the question of the minimum rate or rates of wages to be paid under above cited paragraph (C) of proviso (1) of subsection 6(c) of the Act in lieu of those provided under paragraph (A) of proviso (1) to employees in the shoe and related products industry in Puerto Rico, as that industry is defined in Administrative Order No. 558.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee filed with the Administrator a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1064 as amended; 29 U.S.C. 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), section 6(c)(3) of the Fair Labor Standards Amendments of 1961 (sec. 5(c), Pub. Law 87-30), and General Order No. 45-A (15 F.R. 3290) of the Secretary of Labor, the recommendations of the Committee are hereby published in this order amending the first paragraph in 29 CFR 601.2, effective November 26, 1961, to read as follows:

§ 601.2 Wage rates.

(a) Wages at a rate of not less than 71 cents an hour shall be paid under section 6(c), proviso (1) of the Fair Labor Standards Act of 1938 by every employer to each of his employees in the general classification of the shoe and related products industry in Puerto Rico who in any workweek is engaged in commerce or the production of goods for commerce, and this classification shall be defined as all activities included in the definition of the shoe and related products industry in Puerto Rico, when performed by employees who would have been subject to section 6 of the Act prior to the 1961 amendments.

Signed at Washington, D.C., this 26th day of October 1961.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 61-10426; Filed, Nov. 1, 1961; 8:46 a.m.]

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 793—EXEMPTION OF CERTAIN RADIO AND TELEVISION STATION EMPLOYEES FROM OVERTIME PAY REQUIREMENTS UNDER SECTION 13(b)(9) OF THE FAIR LABOR STANDARDS ACT

Chapter V of Title 29 of the Code of Federal Regulations is hereby amended by adding thereto an additional part, designated Part 793. The new Part 793 contains the interpretations formulated by the Department of Labor of section 13(b)(9) of the Fair Labor Standards Act of 1938, as added by the Fair Labor Standards Amendments of 1961 (sec. 9, Public Law 87-30), which provides an exemption from the overtime pay provisions of the Act for certain employees employed by certain small market radio and television stations.

This part shall become effective upon publication in the FEDERAL REGISTER.

The new 29 CFR Part 793 reads as follows:

INTRODUCTORY

REQUIREMENTS FOR EXEMPTION

WORKWEEK APPLICATION OF EXEMPTION

AUTHORITY: §§ 793.0 to 793.21 issued under secs. 1-19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201-219.

INTRODUCTORY

§ 793.0 Purpose of interpretative bulletin.

This Part 793 constitutes the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(9) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the overtime pay provisions of the Act for certain employees employed by certain small market radio and television stations. This exemption was added to the Act by the 1961 amendments. It is the purpose of this bulletin to make available in one place the interpretations of the provisions in section 13(b)(9) which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon re-examination of an interpretation, that it is incorrect.

§ 793.1 Reliance upon interpretations.

The interpretations of the law contained in this part are official interpretations which may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947. All prior opinions, rulings and interpretations which are inconsistent with the interpretations in this bulletin are rescinded and withdrawn.

§ 793.2 General explanatory statement.

Some employees of radio and television stations perform work which may be exempt from the minimum wage and overtime requirements under section 13(a)(1) of the Act. The 13(a)(1) exemption applies to employees employed in a bona fide executive, administrative or professional capacity, or in the capacity of outside salesman, as these terms are defined and delimited by regulations of the Secretary. This exemption con-

tinues to be available for employees of radio and television stations who meet the requirements for exemption specified in Part 541 of this chapter. The section 13(b)(9) exemption, which is an exemption from the overtime provisions of the Act, but not from the minimum wage requirements, applies to a limited classification of employees employed by small market radio and television stations whose employment meets the requirements for the exemption. These requirements and their meaning and application are discussed in this bulletin.

REQUIREMENTS FOR EXEMPTION

§ 793.3 Statutory provision.

Section 13(b)(9) of the Act exempts from the overtime requirements of section 7, but not from the minimum wage provisions of section 6, of the Act:

any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial cenus figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area.

§ 793.4 General requirements for exemption.

All of the following requirements must be met in order that an employee may be exempt under section 13(b)(9):

(a) The employee must be "employed as" an announcer, or a news editor, or a chief engineer.

(b) The employee must be employed "by" a radio or television station.

(c) The major studio of such radio or television station must be located in a city or town which meets the prescribed population and locality tests.

§ 793.5 What determines application of the exemption.

The exemption applies only to an employee who is "employed as" an announcer, news editor, or chief engineer, under the conditions specified in section 13(b)(9). Although the nature of the employer's business is important in applying the exemption to a particular employee in one of the named occupations, employment in the named occupation is an essential prerequisite for exemption. Whether an employee is exempt therefore depends upon an examination of his duties as well as the nature of the employer's activities. Some employees of the employer may be exempt and others may not.

§ 793.6 Exemption limited to employees in named occupations.

The legislative history of section 13(b)(9) makes it clear that the exemption is specifically limited to employees employed in the specified occupations (S. Rept. 145, 87th Cong., 1st sess., p. 37). To be exempt, therefore, an employee must be employed in the named occupations of announcer, a news editor, or a chief engineer. In applying this test to an employee, his title or job description is not determinative. His aggregate duties, as evidenced by the work which he actually performs in his everyday activities, determines the nature of his occupation. The employee's duties, taken as a whole, must characterize the occupation of the employee as that of announcer, news editor, or chief engineer, if the statutory requirement that he be "employed as" such an employee is to be satisfied (see Walling v. Haden, 153 F. 2d 196, cert. denied 328 U.S. 866). This exemption does not apply to employees who are employed in occupations other than those of announcer, news editor, or chief engineer.

§ 793.7 "Announcer."

An announcer is an employee who appears before the microphone or camera to introduce programs, read news announcements, present commercial messages, give station identification and time signals, and present other similar routine on-the-air material. In small stations, an announcer may, in addition to these duties, operate the studio control board, give cues to the control room for switching programs, make recordings, make the necessary preparations for the day's programs, play records, or write advertising, promotional or similar type copy. An employee who is primarily engaged in the above described activities and in activities which are an integral part thereof will be considered to be employed as an announcer within the meaning of the exemption in section 13(b)(9).

§ 793.8 "News editor."

A news editor is an employee who gathers, edits and rewrites the news. He may also select and prepare news items for broadcast and present the news on the air. An employee who is primarily engaged in the above duties and in activities which are an integral part thereof will be considered to be employed as a news editor within the meaning of the exemption in section 13(b)(9).

§ 793.9 "Chief engineer."

A chief engineer is an employee who primarily supervises the operation, maintenance and repair of all electronic equipment in the studio and at the transmitter and is licensed by the Federal Communications Commission as a Radio Telephone Operator First Class. In small stations, only one such engineer may be employed, and in some cases he may be assisted by part-time workers from other departments. The engineer in such cases will be regarded as employed as the "chief engineer" for purposes of the section 13(b)(9) exemption provided that he performs the duties described above and is properly licensed by the Federal Communications Commission. Where two or more engineers are employed by a station, only one may qualify as "chief engineer"—that one who, on the basis of the factual situation, is in charge of the engineering work.

§ 793.10 Primary employment in named occupations.

The legislative history of the exemption is explicit that the exemption applies only to an employee who is employed "primarily" as an announcer, news editor, or chief engineer. Thus the Senate Report states: "The exemption is specifically limited to those employees who are employed primarily in the named occupations * * *" (S. Rept. 145, 87th Cong., 1st sess., p. 37). No specific rule can be established for determining whether in any given case an employee is employed "primarily" in the named occupations. Generally, however, where an employee spends more than half of the hours he works in a workweek in a named occupation, he will be considered to be primarily employed in such occupation during that workweek. The answer will necessarily depend upon the facts in each case.

§ 793.11 Combination announcer, news editor and chief engineer.

The 13(b)(9) exemption, as was made clear during the debate on the amendment, is intended to apply to employees employed in the named occupations by small market radio and television stations. It was known at the time of such debate that these stations employ only a small number of employees and that, at times, an employee of such a station may perform a variety of duties in connection with the operation of the station. For example, an employee may perform work both as an announcer and as a news editor. In such cases, the primary employment test under the section 13(b)(9) exemption will be considered to be met by an employee who is employed primarily in any one or any combination of the named occupations. Thus an employee who works both as an announcer and news editor for the greater part of the workweek will be considered to be primarily employed in the named occupations during that week.

§ 793.12 Related and incidental work.

An employee who is employed primarily in one or more of the named occupations may also engage in other duties pertaining to the operation of the station by which he is employed. The Senate Report states that, for purposes of this exemption, employees who are primarily employed in the named occupation "may engage in related activities, including the sale of broadcasting time for the broadcasting company by which they are employed, as an incident to their principal occupation", (S. Rept. 145, 87th Cong., 1st sess., p. 37). Time spent in such duties will not be considered to defeat the exemption if the employee is primarily employed in the named occupations and if the other requirements of the exemption are met.

§ 793.13 Limitation on related and incidental work.

The related work which an employee may perform is clearly limited in nature and extent by a number of requirements. One limitation is that the work must be an incident to the employee's primary occupation. The work therefore may not predominate over his primary job. He is not "employed as" an announcer, news editor, or chief engineer if his dominant employment is in work outside such occupations (see Walling v. Haden, 153 F. 2d 196, cert. denied 328

U.S. 866). For instance, an announcer who spends 40 hours of his 48 hour workweek in selling broadcasting time would not be considered to be "incidentally" engaged in such selling. Selling would in such circumstances be his primary occupation. His duties as an announcer must constitute his primary job. Another requirement is that the work of the employees must be performed "for the broadcasting company by which they are employed * * *" (see S. Rept. cited in § 793.12). Sale of broadcasting time for a company which does not employ the employee as an announcer, news editor, or chief engineer, is not exempt work. Work which is not performed for the station by which the employee is employed, is not intended to be exempt. For a discussion of the effect on the exemption of nonexempt work see §§ 793.19 to 793.21.

§ 793.14 Employed by.

The application of the exemption is limited to employees "employed by" a radio or television station. The question whether a worker is employed "by" a radio or television station depends on the particular facts. (See Rutherford Food Corporation v. McComb, 331 U.S. 722; U.S. v. Silk, 331 U.S. 704.) In general, however, an employee is so employed where he is hired by the radio or television station, engages in its work, is paid by the radio or television station and is under its supervision and control. Employees of independent contractors and of others who work for a radio or television station but who are not "employed by" such station are not exempt under this exemption even if they engage in the named occupation. (Mitchell v. Kroger, 248 F. 2d 935.)

§ 193.15 Duties away from the station.

An employee who is "employed by" a radio or television station in one or more of the named occupations may perform his work at the station or away from the station so long as his activities meet the requirements for exemption.

§ 793.16 "Radio or television station."

The employee must be employed by a "radio or television station." A radio or television station is one which is designated and licensed as such by the Federal Communications Commission.

§ 793.17 "Major studio."

The exemption further depends on whether "the major studio" of the radio or television station which employs the employee is in a city or town as defined in section 13(b)(9). The location of secondary studios of the radio or television station is immaterial. It is the location of the "major" studio that determines the qualification of the employer for the exemption. A major studio for purposes of the exemption is the main studio of the radio or television station as designated on the station's license by the Federal Communications Commission. It is this major studio which must be located in the city or town as defined in section 13(b)(9) of the Act.

§ 793.18 Location of "major studio".

Section 13(b)(9) specifies that the "major studio" must be located "(A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area." These tests may be summarized as follows:

(a) *A city or town with more than 100,000 population.* The exemption does not apply to any employee of a radio or television station the major studio of which is located in any city or town with a population in excess of 100,000.

(b) *A city or town with 100,000 population or less.* The exemption may apply if the major studio is located in a city or town of not more than 100,000 population: *Provided*, That the city or town is not within a standard metropolitan statistical area which has more than 100,000 population.

(c) *A city or town with 25,000 population or less.* The exemption may apply even if the major studio is located in a city or town that is within a standard metropolitan statistical area which has more than 100,000 population: *Provided*, That such city or town has a population of not more than 25,000, and the city or town is at least 40 airline miles from the principal city in such area.

(d) *Sources of information.* The Bureau of the Budget issues periodically a booklet entitled "Standard Metropolitan Statistical Areas", which lists and describes these areas in the United States and Puerto Rico. The booklet lists the Standard metropolitan statistical areas by name and shows their population according to the latest available decennial census figures as compiled by the Bureau of the Census. The booklet also lists the major cities within each standard metropolitan statistical area and the population of these cities. From time to time, new areas are designated as "standard metropolitan statistical areas" and areas once designated as such are deleted from the area definitions. This booklet may be purchased, for 25 cents, from the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C.

(e) *Principal city.* The term "principal city", as used in section 13(b)(9), means the "central city", or cities, of the standard metropolitan statistical area, which are defined and designated as such by the Bureau of the Census. The name of the "central city" is incorporated in the name of the standard metropolitan statistical area. Where two or more cities are designated by the Bureau of the Census as the "central cities", the names of such cities appear in the title of the standard metropolitan statistical area. For example, the "Duluth-Superior" standard metropolitan statistical area, has two "central" cities, namely Duluth and Superior; both appear in the title of the standard metropolitan statistical area, and both are regarded as "principal" cities for purposes of the section 13(b)(9) exemption. Where, as in the example, more than one city is designated as the "central" city, airline mileage will be measured from that "central" city which is nearest to the city or town in which the major studio of the radio or television station is located.

(f) *Determining the population.* The population of a city or town, or of a standard metropolitan statistical area, will be determined by the latest available decennial census figures as compiled by the U.S. Bureau of the Census.

(g) *Measuring airline miles.* Airline miles for purposes of the section 13(b)(9) exemption are measured, with a straight edge on a map, from the zero milestone, or the city hall, of the "central" city, to the zero milestone, or city or town hall, of the city or town in which the major studio of the radio or television station is located.

WORKWEEK APPLICATION OF EXEMPTION

§ 793.19 Workweek is used in applying the exemption.

The unit of time to be used in determining the application of the exemption under section 13(b)(9) to an employee is the workweek. (See Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n, 80 F. Supp. 953, affirmed, 181 F. 2d 697.) A workweek is a fixed and regularly recurring period of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. The workweek may not be changed for the purpose of evading the requirements of the Act.

§ 793.20 Exclusive engagement in exempt work.

An employee who engages exclusively in a workweek in work which is exempt under section 13(b)(9) is exempt from the Act's overtime requirements for the entire week.

§ 793.21 Exempt and nonexempt work.

Where an employee in the same workweek performs work which is exempt from the overtime requirements of the Act under section 13(b)(9), and also engages in work to which the overtime requirements apply, he is not exempt from overtime provisions of the Act in that week. (See McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n., 80 F. Supp. 953, affirmed, 181 F. 2d 697; Mitchell v. Hunt, 263 F. 2d 913; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969; McComb v. del Valle, 80 F. Supp. 945; Walling v. Peacock Corp., 58 F. Supp. 880.) As explained in § 793.13, work which does not come within the occupational duties of an announcer, news editor, or chief engineer, or which is not related and incidental thereto, is

not exempt work under section 13(b)(9). The mere isolated or occasional performance of insubstantial amounts of such nonexempt work will not defeat the exemption for the employee. Where, however, an employee, in a particular workweek, performs a substantial amount of nonexempt work to which the overtime provisions of the Act are applicable, the employee is not exempt under section 13(b)(9) in that workweek. For administrative purposes an employee who spends 20 percent or more of the hours he works in a workweek in such nonexempt work, will not be considered exempt under section 13(b)(9) in that workweek.

Signed at Washington, D.C., this 30th day of October 1961.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 61-10451; Filed, Nov. 1, 1961; 8:50 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 204—DANGER ZONE REGULATIONS

Atlantic Ocean Off Cape Cod, Massachusetts

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 204.3 governing the use and navigation of a danger zone in the Atlantic Ocean off Wellfleet, Cape Cod, Massachusetts, is hereby revoked effective on publication in the FEDERAL REGISTER since the danger zone is no longer required for a firing range, as follows:

§ 204.3 Atlantic Ocean off Cape Cod, Mass.; Army Antiaircraft Artillery firing range. [Revoked]

[Regs., October 6, 1961, 285/91 (Atlantic Ocean, Mass.)—ENGCW-ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 61-10418; Filed, Nov. 1, 1961; 8:45 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Education and Training of World War II Veterans and Vocational Rehabilitation Under 38 U.S.C. Ch. 31

MAXIMUM DURATION OF THE COURSE

1. In § 21.204, paragraphs (b) and (c) are amended to read as follows:

§ 21.204 Maximum duration of the course.

* * * * *

(b) *Conditions governing providing vocational rehabilitation training for World War II veterans.* An otherwise eligible veteran who has been prevented from timely entering or, having entered, from completing vocational rehabilitation training may be afforded training beyond July 25, 1960, but not beyond July 25, 1965, subject to meeting one of the following conditions:

(1) The veteran had not entered training prior to July 25, 1960, but it is determined that:

(i) His physical or mental condition was such as to make training medically infeasible during all or any part of both of the periods April 25, 1952, to July 25, 1952, and April 25, 1956, to July 25, 1956. Such determination shall not be based upon an acute condition of a transitory nature such as would have caused a temporary delay as distinguished from an indefinite postponement of the veteran's induction into training; or

(ii) His discharge from service was such as to meet the basic eligibility requirements for vocational rehabilitation for the first time on or subsequent to April 25, 1956; or

(iii) He first established the existence of a service-connected compensable disability on or subsequent to April 25, 1956; or

(iv) Subsequent to April 25, 1956, he has established the existence of an increase in the degree of the disabling effect of his service-connected disability or an additional service-connected disability which warrants a current finding that need for vocational rehabilitation exists and is attributable to the change.

(2) The veteran had entered training on or before July 25, 1960, had been unable to enter, or, having entered, had been unable to complete training before July 25, 1956, for one of the reasons specified in the law and Veterans Administration regulations governing training during the 4-year period following July 25, 1956, and it is determined that one of the following additional conditions exists:

(i) As of the last day when sufficient time remained to permit completion of the course by July 25, 1960, the veteran's physical or mental condition:

(*a*) Made pursuit of training medically infeasible; or

(*b*) Required a reduction in his scheduled hours of training; or

(*c*) Prevented an anticipated increase in his scheduled hours of training where the veteran was already pursuing training on a reduced-time basis.

(ii) Because of the veteran's physical or mental condition and, through no fault on his part, revaluation became necessary, and the objective selected required or requires training beyond July 25, 1960. Where such veteran was in interrupted or discontinued status, except where his physical or mental condition prevented him from pursuing training, he must have made himself available for reentrance when there was sufficient time remaining before July 25, 1960, to complete the training which would have been required to attain the last established objective of record.

(3) The veteran was in pursuit of a course of vocational rehabilitation training on June 1, 1960.

A World War II veteran may not be entered or reentered into training which cannot be completed by July 25, 1965, except under paragraph (d) of this section.

(c) *Conditions governing providing vocational rehabilitation training for Korean conflict veterans.* The basic termination date for a disabled veteran of the Korean conflict is August 20, 1963, if he was discharged from active service prior to August 20, 1954; or January 31, 1964, or that date which is exactly 9 years after his discharge or release from active service whichever is earlier, if he was discharged on or after August 20, 1954. In accordance with the following provisions an otherwise eligible veteran who has been prevented from timely entering or, having entered, from completing vocational rehabilitation training within the 9-year period ending with his basic termination date, may be afforded training beyond his basic termination date but not beyond a date falling exactly 4 years after his basic termination date.

(1) *Prevented from timely entering training.* A veteran who has not entered training prior to his basic termination date shall be deemed to have been prevented from timely entering training if it is determined that:

(i) His physical or mental condition was such as to make training medically infeasible during all or any part of the 90-day period immediately preceding the date falling exactly 4 years prior to his basic termination date. Such determination shall not be based upon an acute condition of transitory nature such as would have caused a temporary delay as distinguished from an indefinite postponement of the veteran's induction into training; or

(ii) His discharge from service was such as to meet the basic eligibility requirement for vocational rehabilitation for the first time on or subsequent to the beginning day of the 4-year and 90-day period immediately preceding his basic termination date; or

(iii) He first established the existence of a service-connected compensable disability on or subsequent to the beginning day of the 4-year and 90-day period immediately preceding his basic termination date; or

(iv) Subsequent to the beginning day of the 4-year and 90-day period immediately preceding his basic termination date, he has established the existence of an increase in the degree of the disabling effect of his service-connected disability or an additional service-connected disability which warrants a current finding that need for vocational rehabilitation exists and is attributable to the change.

(2) *Having timely entered training, prevented from completing training.* A veteran who was not prevented from timely entering vocational rehabilitation training, and who was properly entered into training will be deemed to have been prevented from completing his training

only when it is determined that one of the following conditions exists:

(i) As of the last day when sufficient time remained or remains to permit completion of the course within the 9-year period ending with his basic termination date, the veteran's physical or mental condition:

(a) Made or makes pursuit of training medically infeasible; or

(b) Requires a reduction in his scheduled hours of training; or

(c) Prevents an anticipated increase in his scheduled hours of training where the veteran is already pursuing training on a reduced-time basis.

(ii) Because of the veteran's physical or mental condition and, through no fault on his part, revaluation is necessary, and the objective selected will require training beyond his basic termination date. Where such veteran was in interrupted or discontinued status, except where his physical or mental condition prevented him from doing so, he must have made himself available for reentrance when there was sufficient time remaining before his basic termination date to complete the training which would have been required to attain the last established objective of record.

A Korean conflict veteran may not be entered or reentered into training which cannot be completed by his termination date except under this paragraph or paragraph (d) of this section.

* * * * *

2. Section 21.800 is revoked.

§ 21.800 Vocational rehabilitation for disabled veterans of World War II, who were prevented from timely entering or completing training. [Revoked]

(72 Stat. 1114; 38 U.S.C. 210)

This regulation is effective November 2, 1961.

[SEAL] W. J. DRIVER,
Deputy Administrator.

[F.R. Doc. 61-10439; Filed, Nov. 1, 1961; 8:48 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2526]

[New Mexico 094320]

NEW MEXICO

Withdrawing Lands for Use of the Atomic Energy Commission

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604) as amended, and reserved for use of the Atomic Energy Commission for experimental project purposes, and allied safety areas:

NEW MEXICO PRINCIPAL MERIDIAN

T. 23 S., R. 30 E.,
Sec. 10, NW¼NW¼;
Sec. 34.
(680 acres.)

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

OCTOBER 26, 1961.

[F.R. Doc. 61-10429; Filed, Nov. 1, 1961; 8:46 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 61-1260]

PART 1—PRACTICE AND PROCEDURE

Taking of Depositions in Hearing Proceedings

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of October 1961;

The Commission having under consideration §§ 1.122 and 1.123 of its rules of practice and procedure, which pertain to the taking of depositions in hearing proceedings; and

It appearing, under these provisions, that the presiding officer has no opportunity to rule on the propriety of depositions unless a motion opposing the taking of depositions is filed by one of the parties or by the person to be examined, and that his authority to prevent the taking of depositions is severely restricted even in the event such a motion is filed; and

It further appearing that there are circumstances in which the taking of depositions is neither necessary nor desirable and in which a timely adverse ruling by the presiding officer will effect a saving of work, time, and expense, and will expedite the conduct of the hearing; and

It further appearing that the presiding officer is charged with controlling the course and conduct of the hearing and that, in effectively exercising this responsibility, he should be afforded an opportunity to prevent or restrict the taking of depositions; and

It further appearing that the amendments adopted herein pertain to matters of procedure and hence that section 4 of the Administrative Procedure Act is inapplicable; and

It further appearing that the amendments adopted herein are issued pursuant to authority contained in sections 4(i), 303(r), and 409 of the Communications Act of 1934, as amended;

It is ordered, effective November 2, 1961, except as notices of the taking of depositions may have been served upon the parties before that date, that Part 1, rules of practice and procedure, is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303; sec. 409, 75 Stat. 422, as amended; 47 U.S.C. 409)

Released: October 27, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

1. Sections 1.122 and 1.123 are amended to read as follows:

§ 1.122 Notice of take depositions.

(a) A party to a hearing desiring to take the deposition of any person shall give reasonable notice in writing to every other party and to the person to be examined. An original and seven copies of the notice shall be filed with the Commission.

(b) The notice shall contain the following information:

(1) The name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The time and place for taking the deposition of each person to be examined.

(3) The matters upon which each person will be examined.

(4) A statement of reasons supporting the need for eliciting testimony upon such matters by deposition rather than by direct testimony.

(5) A statement of reasons (where depositions on a single matter are to be taken from more than one person) for taking multiple depositions to establish the facts in question.

§ 1.123 Deposition orders.

(a) On his own motion or upon motion reasonably made by any party or by the person to be examined, the presiding officer may order:

(1) That the deposition shall not be taken.

(2) That it may be taken only at some designated time or place other than that stated in the notice.

(3) That it may be taken only on written interrogatories.

(4) That certain matters shall not be inquired into.

(5) That the scope of the examination shall be limited to certain matters.

(6) That the examination shall be held under such circumstances as will effectuate the ends of justice.

(7) That after being sealed the deposition shall be opened only by order of the presiding officer.

(b) Motions opposing the taking of depositions shall be served on all parties to the proceeding and on the person to be examined. No further pleadings may be filed unless specifically requested or authorized by the presiding officer. The presiding officer may in his discretion direct the parties or their attorneys to appear at a specified time and place for a conference to consider matters raised by the notice or the opposition.

(c) If a motion opposing the taking of depositions is not filed, and if no action is taken by the presiding officer on his own motion, within ten days after filing of the notice to take depositions,

the depositions described in the notice may be taken.

(d) In acting on the notice to take depositions, the presiding officer may consider the following matters:

(1) The relevancy and materiality of the matters upon which each person will be examined, and the competency of such person to testify on such matters.

(2) Any measures which justice may require to protect a party or witness from annoyance, embarrassment, or oppression.

(3) The desirability of establishing the facts in question by direct testimony rather than by deposition.

(4) The necessity for taking multiple depositions to establish the facts in question.

(e) No inference concerning the admissibility of a deposition in evidence shall be drawn because of favorable action on the notice to take depositions.

(f) Nothing in this section or in § 1.122 shall be construed to prevent the taking of depositions which may be authorized by the presiding officer on the record during the course of either a prehearing conference or an evidentiary hearing.

[F.R. Doc. 61-10467; Filed, Nov. 1, 1961; 8:52 a.m.]

[Docket No. 6741]

PART 1—PRACTICE AND PROCEDURE

PART 3—RADIO BROADCAST SERVICES

Clear Channel Broadcasting In Standard Broadcast Band; Order Extending Time for Filing Responses to Petitions for Reconsideration

1. In a motion, filed October 25, 1961, Midwest Radio-Television, Inc., licensee of Station WCCO, Minneapolis, Minnesota, and a party to the above-entitled proceeding, requests that the time for filing responses to the petitions for reconsideration herein be extended to November 6, 1961. In so doing, it notes that the petitions for reconsideration have been filed on various different dates so that responses would fall due on different dates, and suggests the November 6 date be made applicable to all such responses.

2. Since it does not appear that the Commission would, in any event, be able to complete its study of this matter prior to the date requested, the requested extension of time will not delay disposition of the petitions or prejudice any party. Moreover, it is desirable that the Commission have before it the benefit of the opposing views. We therefore find the requested extension to be warranted and that it will serve the public interest.

3. *Accordingly, it is ordered,* This 26th day of October 1961, That the aforesaid motion of Midwest Radio-Television, Inc. is granted; and that the time for filing responses to petitions for reconsideration herein is extended to November 6, 1961.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and section 0.241 (d)(8) of the Commission's rules.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 303, 48 Stat. 1082, as amended; sec. 5, 66 Stat. 713; 47 U.S.C. 303, 155)

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10468; Filed, Nov. 1, 1961; 8:52 a.m.]

[FCC 61-1292]

PART 1—PRACTICE AND PROCEDURE

PART 3—RADIO BROADCAST SERVICES

Modification and Clarification of Application Processing Under New Clear Channel Rules

OCTOBER 27, 1961.

This notice refers to the Report and Order released by the Commission September 14, 1961 (26 F.R. 8886) in the Clear Channel proceeding (Docket No. 6741). In addition to amending Part 3 of the rules concerning the use of certain clear channel frequencies, that Report and Order also amends Part 1 with respect to the procedures to be followed in processing applications on frequencies adjacent to those substantively affected by the amendments to Part 3. This Public Notice is being issued to clarify the processing of applications under the new rules and to announce certain modifications adopted today and effective October 30, 1961. Those modifications, which will be the subject of a Supplement to the Report and Order in Docket No. 6741, apply to applications for new stations or major change in an existing station on one of the frequencies within 30 kc of one of the 12 Class I–A frequencies on which the status quo is presently maintained. The details thereof are incorporated within the explanation which follows.

Clear channels. It should be noted that, excluding the States of Alaska and Hawaii, and the Commonwealth of Puerto Rico and the Virgin Islands, the amendment of § 3.25 will permit the assignment of only one additional unlimited time station to certain of the clear channels listed under § 3.25(a) and will bar the assignment of any other new stations, either unlimited time, daytime, or part-time, to these or any of the other Class I–A clear channels. Further, and with the exceptions mentioned above, existing stations now operating on these channels are restricted to the facilities authorized as of October 30, 1961. Therefore, no applications inconsistent with the new provisions of § 3.25, as outlined above, will be accepted for filing and such applications now on file will be dismissed.

Adjacent channels. With respect to applications involving operation on channels adjacent to (i.e., within 30 kc of) the clear channel frequencies now included in the new § 3.25(a) of the Commission rules, procedures previously in effect have been modified.

Applications involving frequencies adjacent to the 25 Class I–A clear channels will be treated as follows:

As to the 13 clear channels on which duplication by a new Class II station is being permitted, applications involving adjacent frequencies will be processed with a view to preserving the benefits expected to be realized from the new Class II assignments. Only those applications which would co-exist with the new assignments will be considered for grant. The specifics of the procedures are set out in paragraph (a) of new § 1.351 of the rules and are further explained in paragraphs 60–62 of the Report in Docket 6741.

As to the 12 clear channels on which decision has been deferred—beginning October 30, 1961, applications will not be accepted for new stations on, for change of frequency to, or to increase power or operate during nighttime hours not previously authorized on a frequency within 30 kc of one of these 12 Class I–A frequencies. Applications for such facilities filed prior to October 30, 1961 will be studied in the light of their likely impact upon the possible future use of the unduplicated clear channels. From such study, it is contemplated that more precise engineering criteria might evolve which can then be applied in acting upon those applications now pending and announced as standards to govern the acceptance of future applications on these adjacent frequencies. This moratorium on applications does not apply where the facilities requested are in Hawaii, Alaska, Puerto Rico or the Virgin Islands. Applications for other types of changes in facilities on these adjacent frequencies will be processed and acted upon in normal course.

For the adjacent channel frequencies which are subject to both of the above restrictions, applications will be subject to both sets of restrictions.

The formal text of the new rules adopted in Docket 6741 will in all cases govern. Special provision is made there for the frequencies 640, 830, 1230, and 1240 kc. Useful clarification of the adjacent channel question may be found in the following table of frequencies adjacent to the Class I–A clear channels:

610, 620, 630, 680, 690, 710, 730, 790, 800, 810, 850, 860, 900, 1010, 1050, 1060, 1070, 1130, 1140, 1150, 1170, 1190, 1220 kc.	Applications for new stations on, change of frequency to, or to increase power or operate nighttime hours not previously authorized on these frequencies: Will not be accepted on or after October 30, 1961. Those filed before that date will be studied in light of likely impact on either the new Class II assignments provided for on the 13 I–A channels, or possible future use of the other 12. Study continues with criteria and processing rules to be announced.
	Applications for other changes in facilities by existing stations: Such applications will be routinely processed except where they might impinge on the new Class II assignments provided on the 13 Class I–A channels. (This means such applications for 610, 620, or 630 kc will be routinely processed.)
740, 910, 920, 990, 1000, 1080, 1090, 1110, 1230, 1240 kc.	All applications will be processed, and considered for grant upon determination that grant would not impinge upon making of the new Class II assignments provided on the 13 Class I–A channels.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61–10471; Filed, Nov. 1, 1961; 8:53 a.m.]

PART 15—INCIDENTAL AND RESTRICTED RADIATION DEVICES

Measurement Procedure

The Commission having under consideration the desirability of making certain editorial changes in Part 15 of its rules and regulations; and

It appearing that § 15.63(b)(2) of the Commission's rules lists Institute of Radio Engineers Standard 54 IRE 17S1 and amendment 56 IRE 27S1 as measurement methods acceptable for certification of receivers; that these IRE Standards have been superseded by IRE Standard 61 IRE 27S1; that 61 IRE 27S1 prescribes the same measurement procedures as were prescribed by earlier IRE Standards, except that it clarifies and explains in detail the measurement procedures; and that the rule reference should be corrected to direct interested persons to the latest and most complete IRE Standard; and

It further appearing that since the amendment adopted herein is editorial in nature and imposes no new requirements, but clarifies and updates the existing requirements, that prior publication of notice of proposed rule making provided under section 4 of the Administrative Procedure Act is unnecessary and that the amendments may become effective immediately;

It further appearing that the amendments adopted herein are issued pursuant to authority contained in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and section 0.341(a) of the Commission's Statement of Organization, Delegation of Authority and Other Information:

It is ordered, This 25th day of October 1961, that effective November 2, 1961, § 15.63(b)(2) is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 303, 48 Stat. 1082, as amended; sec. 5, 66 Stat. 713; 47 U.S.C. 303, 155)

Released: October 27, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

Section 15.63(b)(2) is amended to read as follows:

§ 15.63 Measurement procedure.

* * * * *

(b) * * *

(2) Institute of Radio Engineers Standard 61 IRE 27S1 for conducted interference measurements from frequency modulated and television broadcost receivers in the range 300 kc to 25 Mc.

[F.R. Doc. 61–10469; Filed, Nov. 1, 1961; 8:52 a.m.]

[FCC 61–1261]

PART 15—INCIDENTAL AND RESTRICTED RADIATION DEVICES

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

Miscellaneous Amendments

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of October 1961;

The Commission having under consideration the Geneva Radio Regulations (1959), which were scheduled to become effective on May 1, 1961, and which have now been ratified by the United States; frequency changes made in Part 2 of the Commission's rules by a Second Memorandum Opinion and Order (FCC 61–1235) in Docket No. 13928; and changes in Parts 15 and 18 of its rules required to conform Parts 15 and 18 to the Geneva Radio Regulations and the changes in Part 2 of the rules; and

It appearing, apart from minor changes of an editorial nature, that the amendments adopted herein conform Parts 15 and 18 to the Geneva Radio Regulations and that such amendments are interpretative; and further that certain of these amendments conform Parts 15 and 18 with changes in Part 2 made following rule making proceedings and that such amendments are editorial in nature; and hence that section 4 of the Administrative Procedure Act is not applicable; and

It further appearing that the amendments adopted herein are issued pursuant to authority contained in sections 4(i), 303(c), and 303(r) of the Communications Act of 1934, as amended;

It is ordered, That, effective November 2, 1961, Parts 15 and 18 are amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 46 Stat. 1082, as amended; 47 U.S.C. 303)

Released: October 27, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

1. Part 15 is amended by changing "kc" and "Mc", wherever they appear, to "kc/s" and "Mc/s".

2. Section 15.4(b) is amended to read as follows:

§ 15.4 General definitions.

* * * * *

(b) *Harmful interference.* Any emission, radiation or induction which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with this chapter.

3. Change heading of Part 18 to read: "Industrial, Scientific and Medical Equipment."

4. Part 18 is amended by changing "kc" and "Mc", wherever they appear, to "kc/s" and "Mc/s".

5. Section 18.2 (f) and (g) is amended to read as follows:

§ 18.2 Definitions.

* * * * *

(f) "Industrial, scientific and medical equipment" (ISM equipment). Devices which use radio waves for industrial, scientific, medical or any other purposes including the transfer of energy by radio and which are neither used nor intended to be used for radiocommunication.

(g) "Harmful interference." Any emission, radiation or induction which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with this chapter.

6. Section 18.6 is amended to read as follows:

§ 18.6 ISM frequencies and frequency tolerances.

The following frequencies are allocated for use by ISM equipment with the tolerance limits specified:

ISM frequency:	*Frequency tolerance*
13,560 kc/s	±6.78 kc/s
27,120 kc/s	±160.0 kc/s
40,680 kc/s	±20.0 kc/s
915 Mc/s [1]	±25.0 Mc/s
2,450 Mc/s [1]	±50.0 Mc/s
5,800 Mc/s [1]	±75.0 Mc/s
22,125 Mc/s [1]	±125.0 Mc/s

[1] The use of this frequency is subject to the conditions in § 18.7.

7. The introductory text of § 18.7 is amended to read as follows:

§ 18.7 Operation on microwave frequencies.

Except for industrial heating equipment which is regulated by §§ 18.101 through 18.122, inclusive, ISM equipment may be operated on the microwave ISM frequencies (915 Mc/s, 2450 Mc/s, 5800 Mc/s and 22,125 Mc/s) subject to the following conditions:

8. Section 18.11(a) is amended to read as follows:

§ 18.11 Operation on assigned frequencies.

* * * * *

(a) Such operation must conform to the general condition set out in the guarantee or certificate required by paragraphs (c) and (d) of this section. Operation must be confined to one or more of the frequencies:

ISM frequency:	*Frequency tolerance*
13,560 kc/s	±6.78 kc/s
27,120 kc/s	±160.0 kc/s
40,680 kc/s	±20.0 kc/s
915 Mc/s [1]	±25.0 Mc/s
2,450 Mc/s [1]	±50.0 Mc/s
5,800 Mc/s [1]	±75.0 Mc/s
22,125 Mc/s [1]	±125.0 Mc/s

[1] The use of this frequency is subject to the conditions in § 18.7.

9. The note following § 18.14 is amended to read: § 18.14 Procedure for type approval.

§ 18.14 Procedure for type approval.

* * * * *

NOTE: Medical diathermy equipment operated on 915 Mc/s, 2450 Mc/s, 5800 Mc/s or 22,125 Mc/s will be eligible for type approval upon a determination by the Laboratory Division of compliance with the requirements of the Commission's public notice and order of December 26, 1946, which requirements are set forth in § 18.7.

10. In § 18.102, paragraphs (d) and (e) are amended by changing "5775 Mc" to "5725 Mc/s"; as amended, paragraphs (d) and (e) read as follows:

§ 18.102 Technical limitations.

* * * * *

(d) Radiation of radio frequency energy from any industrial heating equipment on any frequency below 5725 Mc/s, except ISM frequencies, shall be suppressed so that the radiated field strength does not exceed 10 microvolts per meter at a distance of one mile or more from the equipment.

(e) Radiation of radio frequency energy from any industrial heating equipment on any frequency above 5725 Mc/s, except ISM frequencies, shall be reduced to the greatest extent practicable.

NOTE: The Commission will establish definite radiation limits for these frequencies as soon as information regarding equipment operating on these frequencies becomes available.

11. Section 18.107(f) is amended by changing "5775 Mc" to "5725 Mc/s", as follows:

§ 18.107 Measurement of field strength.

* * * * *

(f) The spectrum shall be investigated from the lowest frequency generated in the equipment up to the tenth harmonic of the fundamental frequency or to 5725 Mc/s whichever is lower.

[F.R. Doc. 61-10470; Filed, Nov. 1, 1961; 8:52 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Horicon National Wildlife Refuge, Wisconsin

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

WISCONSIN

HORICON NATIONAL WILDLIFE REFUGE

Public hunting of big game on the Horicon National Wildlife Refuge, Wisconsin is permitted only on the area designated by signs as open to hunting. This open area, comprising 20,400 acres or 98 percent of the total refuge area is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis 8, Minnesota. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: White-tailed deer only, during the season specified below. The hunting of big game species, as may be otherwise authorized by Wisconsin State regulations, is prohibited.

(b) Open season: From one-half hour before sunrise to sunset daily from December 2 through December 31, 1961.

(c) Bag limit: One deer, of any age or sex, per person per season.

(d) Methods of hunting:

(1) Weapons—Bows and arrows only. Bows must have a pull of not less than 30 pounds. Arrows must have well sharpened metal broadhead blades not less than seven-eighths of an inch and not more than one and one-half inches in width. Arrows with poisoned or explosive points may not be used. Bows held or released by mechanical means may not be used.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

(2) A Federal permit is not required to enter the public hunting area.

(3) The provisions of this special regulation are effective to January 1, 1962.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

OCTOBER 26, 1961.

[F.R. Doc. 61-10434; Filed, Nov. 1, 1961; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Proposed Regulations Relating to the Election for Prior Taxable Years in the Case of Quartzite and Clay Used in the Production of Refractory Products

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 2(f) of the Act of September 26, 1961 (Public Law 87–321, 75 Stat. 683).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

The regulations set forth below are hereby prescribed under section 2 of the Act of September 26, 1961 (Public Law 87–321, 75 Stat. 683):

Sec.

§ 1.9005 Statutory provisions; section 2 of the Act of September 26, 1961 (Public Law 87–321, 75 Stat. 683).

SEC. 2. *Election for quartzite and clay used in the production of refractory products*—(a) *Election for past years.* If an election is made under subsection (c), in the case of quartzite and clay used by the mine owner or operator in the production of refractory products, for the purpose of applying section 613 (c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) for each of the taxable years with respect to which the election is effective—

(1) The term "ordinary treatment processes" shall include crushing, grinding, and separating the mineral from waste, but shall not include any subsequent process; and

(2) The gross income from mining for each short ton of such quartzite or clay used in the production of all refractory products sold during the taxable year shall be equal to 87½ percent of the lesser of—

(A) The average lowest published or advertised price, or

(B) The average lowest actual selling price, at which, during the taxable year, the mine owner or operator offered to sell, or sold, such quartzite or clay (in the form and condition of such products after the application of only the processes described in paragraph (1) and before transportation from the plant in which such processes were applied). For purposes of this paragraph, exceptional, unusual, or nominal sales or selling prices shall be disregraded. If the mine owner or operator makes no sales of, or makes only exceptional, unusual, or nominal sales of, such quartzite or clay after application of only the processes described in paragraph (1), then in lieu of the price provided for in subparagraph (A) or (B) there shall be used the average lowest recognized selling price for the taxable year for such quartzite or clay in the marketing area of the mine owner or operator published in a trade journal or other industry publication.

(b) *Years to which applicable.* An election made under subsection (c) to have the provisions of this section apply shall be effective on and after January 1, 1951, for all taxable years beginning before January 1, 1961, in respect of which—

(1) The assessment of a deficiency,

(2) The refund or credit of an overpayment, or

(3) The commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on the date of the enactment of this Act by the operation of any law or rule of law. Such election shall also be effective on and after January 1, 1951, for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this Act.

(c) *Time and manner of election.* An election to have the provisions of this section apply shall be made by the taxpayer on or before the 60th day after the date of publication in the FEDERAL REGISTER of final regulations issued under authority of subsection (f), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

(d) *Statutes of limitations.* Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the election under subsection (c) may be made with respect to any taxable year for which such election is effective, and the period within which a claim for refund or credit of an overpayment attributable to the election under such subsection may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subsection (c). An election by a taxpayer under subsection (c) shall be considered as a consent to the application of the provisions of this subsection.

(e) *Terms; applicability of other laws.* Except where otherwise distinctly expressed or manifestly intended, terms used in this section shall have the same meaning as when used in the Internal Revenue Code of 1954 (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this section as if this section were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

(f) *Regulations.* The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section.

§ 1.9005–1 Election relating to the determination of gross income from the property for taxable years beginning prior to 1961 in the case of clay and quartzite used in making refractory products.

(a) *In general.* Section 2 of the Act of September 26, 1961 (Public Law 87–321, 75 Stat. 683), provides that certain taxpayers may elect to apply the provisions of such section to all taxable years beginning before January 1, 1961, with respect to which the election is effective. Section 2 of the Act prescribes special rules for the application of section 613(c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) in the case of quartzite and clay used by the mine owner or operator in the production of refractory products.

(b) *Election.* The election to apply the provisions of section 2 of the Act may be made only in the case of quartzite and clay used in the production of products generally recognized as refractory products by the refractories industry. Examples of such products are clay firebrick, silica brick, and refractory bonding mortars. The election may be made only by a taxpayer who both mined the clay or quartzite and used it in the production of refractory products. The election must be made in accordance with § 1.9005–4 on or before the 60th day after the date of publication in the FEDERAL REGISTER of §§ 1.9005 to 1.9005–5, in final form, and the election shall become irrevocable on that date.

(c) *Years to which the election is applicable.* If the election described in paragraph (b) of this section is made by the taxpayer, the provisions of section 2 of the Act shall be effective on and after January 1, 1951, for all taxable years beginning before January 1, 1961, in respect of which the—

(1) Assessment of a deficiency,

(2) Refund or credit of an overpayment, or

(3) Commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on September 26, 1961, by the operation of any law or rule of law. The election is also effective on and after January 1, 1951, for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before September 26, 1961.

§ 1.9005–2 Effect of election.

(a) *In general.* If a taxpayer makes the election described in paragraph (b) of § 1.9005–1, he shall be deemed to have consented to the application of section 2 of the Act with respect to all the clay and quartzite described in that paragraph for all taxable years for which the election is effective whether or not the taxpayer is litigating the issue for any of such years. Thus, in applying section 613(c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) to those years—

(1) The term "ordinary treatment processes" shall include crushing, grinding, and separating the mineral from waste, but shall not include any subsequent process; and

(2) The gross income from mining for each short ton of quartzite or clay mined by the taxpayer and used by him in the production of all refractory products sold during the taxable year shall be equal to 87½ percent of the lesser of—

(i) The average lowest published or advertised price, or

(ii) The average lowest actual selling price at which the mine owner or operator offered to sell or sold any such quartzite or clay during the taxable year.

(b) *Rules for applying paragraph (a) of this section.* (1) The price described in paragraph (a)(2) of this section and any price described in this paragraph shall be determined with reference to quartzite or clay in the form and condition of such products after the application of only the processes described in paragraph (a)(1) of this section and before transportation from the plant in which such processes were applied.

(2) If quartzite and clay were mined and used by the taxpayer in the production of refractory products, a separate price shall be used with respect to each mineral.

(3) There shall be used for each mineral the lowest price at which it was sold or offered for sale by the taxpayer during the taxable year. Thus, only one price shall be used with respect to each mineral regardless of variations in type or grade.

(4) For purposes of this paragraph, exceptional, unusual, or nominal sales of quartzite or clay shall be disregarded. Thus, for example, if the taxpayer made an accommodation sale during the taxable year at other than the regular price, such sale is to be disregarded.

(5) If the taxpayer made no sales during the taxable year of quartzite or clay in the form and condition described in subparagraph (1) of this paragraph, or if his sales were exceptional, unusual, or nominal, there shall be used the lowest recognized selling price for the taxpayer's marketing area for quartzite or clay (of the same grade and type as that used by him) which was published for the taxable year in a trade journal or other industry publication.

(6) If subparagraph (5) of this paragraph does not apply for the reason that there is no recognized selling price published in a trade journal or other industry publication for the taxpayer's marketing area, there shall be used the lowest price at which quartzite or clay comparable to that used by the taxpayer was sold or offered for sale during the taxable year in that area by other producers similarly circumstanced as the taxpayer or, if appropriate, the lowest price paid by the taxpayer for purchased quartzite or clay.

(7) If the lowest selling price otherwise applicable under the preceding provisions of this paragraph fluctuated during the taxable year, the two or more lowest selling prices shall be averaged according to the number of days during the taxable year that each such price was in effect.

(c) The provisions of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1).—(i) *Facts.* Taxpayer A, a calendar year taxpayer, mined quartzite and clay and used them in the production of recognized refractory products. During the taxable year, the lowest price for which A sold clay after the application of crushing and grinding was $13.75 per short ton. He also sold some ground clay of a different type at $20.00 per short ton. A sold quartzite after the application of crushing and grinding for various prices, depending upon type, ranging from $14.00 per short ton to $20.00 per short ton. During the taxable year, the prices for the various types of ground clay and quartzite did not change. None of the sales by A of ground clay or quartzite were exceptional, unusual, or nominal.

(ii) *Determination of gross income from mining.* If A makes the election described in paragraph (b) of § 1.9005–1, the gross income from mining per short ton of clay mined by A and used in the production of refractory products sold during the taxable year is $12.03 (87½ percent of $13.75), and the gross income from mining per short ton of quartzite mined by A and used in the production of refractory products sold during the taxable year is $12.25 (87½ percent of $14.00). To determine his gross income from mining, A must compute the sum of—

(*a*) $12.03 multiplied by the number of short tons of clay which were mined by A (whether or not during the taxable year) and which were used by A in the production of refractory products (refractory bonding mortar, fire brick, etc.) sold during the taxable year; plus

(*b*) $12.25 multiplied by the number of short tons of quartzite which were mined by A (whether or not during the taxable year) and which were used by A in the production of refractory products sold during the taxable year.

Example (2). Assume the same facts as in example (1) except that on October 1 of the taxable year A's lowest price for clay after the application of crushing and grinding increased to $14.40 per short ton. In this case, the average lowest price for which A sold ground clay during the taxable year must be determined by taking into account the price adjustment of October 1. Under these circumstances, the average lowest price for the ground clay would be $13.91, that is $\$13.75 \times {}^{273}/_{365}$ plus $\$14.40 \times {}^{92}/_{365}$.

(d) *Effect on depletion rates and other items.* The election shall have no effect on the applicable rate of percentage depletion for the taxable years for which the election is effective. In applying the election to the years affected there shall be taken into account the effect that any adjustments resulting from the election shall have on other items affected thereby, such as charitable contributions, foreign tax credit, net operating loss, and the effect that adjustments to any such items shall have on other taxable years. The provisions of section 2 of the Act are applicable with respect to taxable years subject to the Internal Revenue Code of 1939 for purposes of applying sections 450 and 453 of that Code. The election shall have no effect on the determination of the treatment processes which are to be considered as mining or on the determination of gross income from mining for any taxable year beginning after December 31, 1960.

§ 1.9005–3 Statutes of limitation.

Notwithstanding any provision of law to the contrary, the period within which the assessment of any deficiency attributable to the election may be made, or within which the credit or refund of any overpayment attributable to the election may be made, shall not expire sooner than one year after the last day for making the election. Thus, if assessment of a deficiency or credit or refund of an overpayment, whichever is applicable, is not prevented on September 26, 1961, the time for making assessment or credit or refund shall not expire for at least one year after the last day for making the election. Even though assessment of a deficiency is prevented on September 26, 1961, if commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954 may be made on such date, then any deficiency resulting from the election may be assessed at any time within one year after the last day for making the election. If a taxpayer makes the election, he shall be deemed to have consented to the application of the provisions of section 2 of the Act extending the time for assessing a deficiency attributable to the election. Section 2 of the Act does not shorten the period of limitations otherwise applicable. An agreement may be entered into under section 6501(c)(4) of the Internal Revenue Code of 1954 and corresponding provisions of prior law to extend the period for assessment.

§ 1.9005–4 Manner of exercising election.

(a) *By whom election is to be made.* Generally, the taxpayer whose tax liability is affected by the election shall make the election. In the case of a partnership, or a corporation electing under the provisions of subchapter S, chapter 1 of the Internal Revenue Code of 1954, the election shall be exercised by the partnership or such corporation, as the case may be.

(b) *Time and manner of making election.* The election shall be made on or before the 60th day after publication in the FEDERAL REGISTER of §§ 1.9005 to 1.9005–5 in final form, by filing a statement with the district director with

whom the taxpayer's income tax return for the taxable year in which the election is made is required to be filed. The statement shall include the following:

(1) A clear indication that an election is being made under section 2 of the Act, and

(2) The taxable years to which the election applies.

Amended income tax returns reflecting any increase or decrease in tax attributable to the election shall be filed for the taxable years to which the election applies. In the case of partnerships and electing small business corporations under subchapter S, chapter 1 of the Internal Revenue Code of 1954, amended returns shall be filed by the partnership or electing small business corporation, as well as by the partners or shareholders, as the case may be. Any amended return shall be filed with the office of the district director with whom the taxpayer files his income tax return for the taxable year in which the election is made, and, if practicable, on the same date the statement of election is filed, but amended returns shall be filed in no event later than the last day of the first month which ends more than 90 days after the last day for making the election, unless an extension of time is granted under section 6081 of the Internal Revenue Code of 1954. Whenever the amended returns do not accompany the statement of election, a copy of the statement shall be submitted with the amended returns. The amended returns shall be accompanied by payment of the additional tax (together with interest thereon) resulting from the election.

§ 1.9005–5 Terms; applicability of other laws.

All other terms which are not otherwise specifically defined shall have the same meaning as when used in the Internal Revenue Code of 1954 (or the corresponding provisions of prior law) except where otherwise distinctly expressed or manifestly intended to the contrary. Further, all provisions of law contained in the Code (or the corresponding provisions of prior law) shall apply to the extent that they can apply. Thus, all the provisions of subtitle F of the Code (and the corresponding provisions of prior law) shall apply to the extent they can apply, including the provisions of law relating to assessment, collection, credit or refund, and limitations. For purposes of this section and §§ 1.9005–1 to 1.9005–4, inclusive, the term "Act" means the Act of September 26, 1961 (Public Law 87–321, 75 Stat. 683).

[F.R. Doc. 61–10440; Filed, Nov. 1, 1961; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 257]

SALE OR LEASE OF SMALL TRACTS

Miscellaneous Amendments

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the act of June 1, 1938 (43 U.S.C. 682a), as amended, and section 2478 of the Revised Statutes (43 U.S.C. 1201), it is proposed to amend 43 CFR 257.2, 257.9, 257.10, 257.11, 257.13 and 257.14 as set forth below. The purpose of this amendment is to (1) permit public auctions of small tracts wherever appropriate, (2) make the reversionary clause in community site dispositions unlimited in duration; (3) make specific that lands will be leased or sold at their fair market value and (4) eliminate group agreements. In addition, the amendment would spell out requirements for coordination with local governmental units and for consideration of availability of public facilities, and would set new minimum rentals.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments to the Bureau of Land Management, Washington 25, D.C., within 30 days of the date of publications of this notice in the FEDERAL REGISTER.

1. The caption and text of § 257.2 are revised to read as follows:

§ 257.2 Criteria.

(a) It is the program in the administration of the act of June 1, 1938, as amended, to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands. To this end small tract activity shall be coordinated with interested local governmental agencies, and small tract sites will be considered in the light of their effect upon the conservation of natural resources and upon the communities or area involved and in the light of availability of schools, utilities, and other facilities. Lands will not be leased or sold, for example, which would lead to private ownership or control of scenic attractions, or water resources, or other areas that should be kept open to public use. Nor will isolated or scattered settlement be permitted which would impose heavy burdens upon State or local governments for roads; schools; police, health, and fire protection; and other facilities. Undesirable types of construction for settlement or business along public highways and parkways will be guarded against, and lands will not be leased or sold under the act if such action would unreasonably interfere with the use of water for grazing purposes or unduly impair the protection of watershed areas.

(b) Under this act lands may be classified for direct sale, for lease and sale, or for lease only. Revested Oregon and California Railroad lands and reconveyed Coos Bay Wagon Road grant lands in Oregon will be classified for lease only—as will other public lands where title should remain in the United States and leasing is not contrary to the interests of the United States. Lands suitable for community site purposes will be classified for lease, lease and sale, or direct sale at appraised prices and will be subject to application only by nonprofit corporations or associations, States, municipalities, or other governmental subdivisions. Lands may be classified for lease and sale, as provided for in § 257.13, where such action is necessary for the protection of adjacent property and the community as a whole. In other cases, lands will be sold at public auction at not less than their appraised fair market value in accordance with § 257.14.

2. Paragraph (a) of § 257.9 is amended to read as follows:

§ 257.9 Advance payment.

* * * * *

(a) If the land has been classified for lease or for lease and sale, the advance payment is the rental for the entire lease period, as specified in the classification order if such period does not exceed five years. Where lands are classified for lease for periods in excess of five years, the advance payment will be as specified in the classification order. If the land has not been classified, the advance payment is $25 for nonbusiness and $100 for business site applications. Successful applicants will be required to pay any difference between advance payment and rental or purchase price before their applications will be granted.

3. Paragraph (b) of § 257.10 is amended to read as follows:

§ 257.10 Community sites; appraisal; restrictions.

* * * * *

(b) Where lands are sold at less than fair market value in accordance with paragraph (a) of this section, the patent will contain a provision for reversion of title to the United States if the lands are used for any purpose not consistent with the classification order after issuance of patent unless consent to change the use is first obtained from the authorized officer.

4. Paragraph (b) of § 257.11 is amended to read as follows:

§ 257.11 Lease provisions; terms and rentals.

* * * * *

(b) The amount of rental will be specified in the appropriate order. The rental for community sites will take into consideration the purpose for which the land will be used. Rental for other types of sites will equal the fair market rental of the lands, provided, however, the minimum rental will be $100 per year for business sites and $25 per year for other sites.

5. Paragraph d (1), (2), and (3) of § 257.13 are revoked and paragraph (a) is revised to read as follows:

§ 257.13 Leases with option to purchase; sale; patent.

(a) Leases for lands classified for lease and sale will contain an option to purchase clause. The option to purchase clause will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract at any time within the term of the lease,

provided the improvements required by the lease have been made and all other terms and conditions of the lease complied with. The net purchase price of the land will be the appraised fair market value of the unimproved land as of the date of the lease minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of an allowable application to purchase.

6. Paragraph (a) of § 257.14 is revised to read as follows:

§ 257.14 Public auctions.

(a) Whenever lands are classified for direct sale by public auction, they will be sold at not less than their appraised fair market value at the time and place and in the manner specified by the classification order.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

OCTOBER 26, 1961.

[F.R. Doc. 61-10423; Filed, Nov. 1, 1961; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Ch. IX]

[Dockets Nos. AO 336, AO 337]

TURKEY HATCHING EGGS AND TURKEYS

Notice of Hearing With Respect to Proposed Marketing Agreements and Orders

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the times and places hereinafter specified with respect to a proposed marketing agreement and order regulating the handling of turkey hatching eggs and a proposed marketing agreement and order regulating the handling of turkeys. The proposed marketing agreements and orders have not received the approval of the Secretary of Agriculture.

The public hearing will be held at Southern States Cooperative Inc. Building, 12th Floor, 7th and Main Streets, Richmond, Virginia, November 20 to 22, 1961, inclusive; at Senate Chamber, State Capitol, Des Moines, Iowa, November 24 to 27, 1961, inclusive; at Clark Court, Court 5, 3d and Carson Streets, Las Vegas, Nevada, November 29 to December 1, 1961, inclusive; at New Federal Office Building, 9th Floor, 4th and Robinson Streets, Oklahoma City, Oklahoma, December 4 to 6, 1961, inclusive; and at Century Room, LaSalle Hotel, Chicago, Illinois, beginning December 8, 1961. Each day's session of the hearing will commence at 9:00 a.m., local time, unless the Presiding Officer otherwise specifies during the course of the hearing.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the provisions of the proposed marketing agreements and orders hereinafter set forth, and to any appropriate modifications thereof.

Upon the request of the National Turkey Federation, a National Turkey Advisory Committee was appointed for the purpose, among others, of making recommendations to the Secretary of Agriculture concerning whether there is reason to believe that national marketing agreements and orders regulating the handling of turkey hatching eggs and turkeys would tend to effectuate the declared policy of the act. As a result of several meetings of the committee, such committee proposed that a public hearing be held upon the following proposed marketing agreements and orders regulating the handling of turkey hatching eggs and turkeys.

It is concluded that there is reason to believe that the issuance of an order or orders will tend to effectuate the declared policy of the act and that a hearing thereon should be held.

Proposed Marketing Agreement and Order Regulating the Handling of Turkey Hatching Eggs

DEFINITIONS

§ E1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ E2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674).

§ E3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ E4 Production area.

"Production area" means the 50 states of the United States and the District of Columbia.

§ E5 Hatching eggs.

"Hatching eggs" means turkey eggs which are acquired for the production of poults within the production area by hatching in incubators.

§ E6 Handle.

"Handle" means to set hatching eggs, in incubators for the hatching of turkey poults, or to receive such eggs at a hatchery for hatching, within the production area.

§ E7 Handler.

"Handler" means any person who handles hatching eggs, or causes hatching eggs to be handled, and includes a person who handles hatching eggs of his own production.

§ E8 Producer.

"Producer" means any person directly or indirectly engaged in the production of hatching eggs and who (a) has a proprietary interest in the eggs, or (b) who in a proprietary capacity operates and controls facilities for the production of hatching eggs and produces hatching eggs with such facilities: *Provided,* That for purposes of this part, if two or more persons are producers with respect to the same hatching eggs their respective percentage shares in the eggs for purposes of this order shall be deemed to be an amount of eggs equal to the total number of eggs so produced divided by the number of persons who are producers thereof unless a written contract between the parties relating to such production submitted to the Secretary or the committee provides for a different percentage distribution of interest.

§ E9 Type or breed.

"Type" or "breed" are synonymous and mean such classification of hatching eggs, by type or breed of turkey, as the committee may recommended and the Secretary approves.

§ E10 Board.

"Board" means the Turkey Hatching Egg Advisory Board established pursuant to § 20.

§ E11 Committee.

"Committee" means the Turkey Hatching Egg Committee established pursuant to § 25.

§ E12 Allotment period.

"Allotment period" means the 12-month period beginning on October 1 of each year and ending on September 30 of the following year or such other period as may be recommended by the committee and approved by the Secretary: *Provided,* That the initial allotment period shall be the period beginning with the effective date of this part and ending on September 30, 1962.

§ E13 Fiscal year.

"Fiscal year" means the 12-month period from October 1 in each year to September 30 in the following year, or such other period as the Secretary, after recommendation of the committee, may establish.

TURKEY HATCHING EGG ADVISORY BOARD

§ E20 Establishment and membership.

A Turkey Hatching Egg Advisory Board (herein referred to as the "board") shall be established, consisting of 60 members, of whom 57 shall be selected to represent various States and regions, as listed below:

California-Nevada-Hawaii	6
Minnesota	6
Iowa	4
Wisconsin	3
Virginia-West Virginia	3
Missouri	3
Texas	3
Indiana	2
Utah and Arizona	2
Ohio	2
Arkansas	2
North Carolina	2
Colorado-New Mexico	1
New England States	1
Georgia-Florida	1
Alaska-Washington	1
Oregon	1

Pennsylvania	1
Oklahoma	1
Michigan	1
Nebraska	1
North Dakota	1
Illinois	1
Kansas	1
South Dakota	1
Kentucky-Tennessee	1
New York	1
Delaware-Maryland-New Jersey	1
South Carolina	1
Montana-Idaho-Wyoming	1
Alabama-Mississippi-Louisiana	1

The remaining three members shall be representatives-at-large and shall be selected at the discretion of the Secretary. Each member of the board shall have an alternate member selected in the same manner as for members.

§ E21 Term of office.

Members and alternate members of the board shall serve for terms of three years ending on September 30: *Provided,* That the term of office of the initial board shall be three years for one-third of the members and their alternates, two years for one-third of the members and their alternates, and for the remaining one-third of the members and their alternates shall be from the effective date of this part to September 30, 1962: *Provided,* That each such member and his alternate shall serve until his successor is selected and qualified.

§ E22 Nomination.

Nominations for membership on the board shall be made at nomination meetings called and supervised by the committee and held in and for each of the States or groups of States specified in § 20 and reasonable publicity shall be provided for such nomination meetings by the committee. Only producers or handlers shall be eligible to vote and each such person shall have but one vote. Three nominations shall be made for each member position, which shall also be deemed nominations for such members' alternate. All nominations shall be certified by the committee to the Secretary as soon as practicable and after the initial appointment of the board, no later than September 1 immediately preceding the commencement of the term of office for the position for which a nomination is certified. Such certification shall include for each nominee a brief summary of his experience and current association with the turkey hatching egg or turkey industry. For the purpose of obtaining nominations for the initial board the Secretary shall perform the functions of the committee.

§ E23 Duties.

The duties of the board shall consist of selecting from among its members a chairman and other officers, establishing procedures for performing its functions, the making of nominations for membership on the committee, the certifying of such nominations to the Secretary, the making of recommendations with respect to marketing policy and the consideration of such other matters as it deems proper or as the committee or the Secretary may request.

TURKEY HATCHING EGG ADMINISTRATIVE COMMITTEE

§ E25 Establishment and membership.

A Turkey Hatching Egg Administrative Committee (herein referred to as committee) is hereby established to administer the terms and provisions of this part. Such committee shall consist of 19 members. For each member there shall be an alternate member.

§ E26 Eligibility.

No person shall be selected or continue to serve as a member or alternate member of the committee unless he is serving as a member or alternate member of the board.

§ E27 Term of office.

Members and alternate members of the committee shall serve for terms of one year ending on September 30, the initial term beginning with the effective date of this part and ending on September 30, 1962, but each such member and alternate member shall continue to serve until his successor is selected and has qualified.

§ E28 Nominations.

The board shall nominate from among its members and alternate members 38 nominees for appointment as members and alternate members of the committee. All such nominations for the committee shall be certified by the board to the Secretary as soon as practicable following the selection of board members by the Secretary. For the purposes of initial nominations the Secretary may consider nominations made by nominees for board membership.

§ E29 Powers.

The committee shall have the following powers:

(a) To administer the terms and provisions of this part;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary, complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ E30 Duties.

The committee shall have among others the following duties:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions and these shall be subject to examination by the Secretary at any time;

(c) To investigate and assemble data on the production, handling, and marketing of turkey hatching eggs and turkeys; and to make recommendations concerning the issuance of regulations pursuant to this part.

(d) To submit to the Secretary or the board, such available information with respect to turkey hatching eggs and turkeys as may be requested and such other information as the committee may deem desirable and pertinent;

(e) To select from among its members officers other than the chairman and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(f) To appoint or employ such other persons as it may deem necessary and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by a certified public accountant at least once each fiscal year and at such other times as the committee may deem necessary or as the Secretary may request, to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(h) To prepare and submit to the Secretary monthly statements of the financial operations of the committee and to make such statements together with the minutes of the meetings of said committee and the board available for inspection at the offices of the committee by producers and handlers;

(i) To give the Secretary the same notice of meetings of the commitee and the board as is given to members;

(j) To investigate compliance with and to use means available to the committee to prevent violation of the provisions of this part; and

(k) To establish with the approval of the Secretary such rules and regulations as are necessary or incidental to administration of this subpart, as are consistent with its provisions, and as would tend to accomplish the purposes of this subpart and the act.

BOARD AND COMMITTEE

§ E31 Selection.

The Secretary shall select and appoint members and alternate members of the board and the committee in the numbers and with the qualifications specified in this subpart. Such selections may be made from the nominations certified by the committee and the board or from other producers and handlers: *Provided,* That the Secretary in making such selections and appointments shall give due recognition to hatching egg and turkey producers, including consideration of the size, nature, and location of their production operations, and reasonable handler representation with a view to the extent possible and practicable to have representation from all segments of the industry.

§ E32 Failure to nominate.

In the event a nominee for any member or alternate member position is not certified pursuant to and within the time specified in this subpart, the Secretary shall select an eligible person to fill such position without regard to nomination.

§ E33 Qualify by acceptance.

Each person selected by the Secretary as a member or as an alternate member shall, prior to serving, qualify by filing with the Secretary a written acceptance as soon as practicable after being notified of such selection.

§ E34 Alternate members.

An alternate for a member shall act in the place and stead of such member (a) during his absence, or (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

§ E35 Vacancies.

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member, or any need to select as successor through failure of any person selected as a member or alternate member to qualify, shall be recognized by the committee certifying to the Secretary a new nominee within 40 calendar days.

§ E36 Compensation and expenses.

The members of the committee and the board, and the alternate members when acting as members, shall be allowed their necessary expenses, actual or per diem, as approved by the committee. If the Secretary upon recommendation of the board determines that it is necessary for the efficient and effective operation of the board or committee that the members thereof receive reasonable compensation for their services, such members may receive such compensation at a rate determined by the Secretary.

§ E37 Procedure.

All decisions of the board and the committee reached at an assembled meeting shall be by majority vote of the members present. All votes in an assembled meeting shall be cast in person and a quorum must be present for a valid decision. A quorum for the board shall consist of not less than thirty (30) members and for the committee not less than ten (10) members. Such quorum requirements may be changed by the Secretary, upon recommendation of the board or committee. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram, to all such members. When any proposition is submitted to be voted on by such method, it must be favored by not less than 14 members of the committee to constitute action by the committee.

JOINT BOARD AND JOINT COMMITTEE

§ E38 Joint board and joint committee.

In the event that the Secretary issues and makes effective separate marketing orders regulating the handling of turkey hatching eggs and of turkeys, the Secretary may appoint the same advisory board and committee to function in such capacities for both orders. Such board and committee shall be established, nominated and appointed in the same manner as specified in this order and shall have duties and responsibilities specified in this order for the board and the committee, respectively: *Provided, however,* That in such event, nominations for the joint board shall be made by the handlers and producers of turkey hatching eggs or of turkeys, as defined in such marketing orders, and, for purposes of voting on nominations to the board, each person who qualifies in any or all such capacities shall have but one vote: *Provided further,* That the costs and expenses of the joint board and joint committee shall be prorated equitably between the two orders as directed by the Secretary.

EXPENSES AND ASSESSMENTS

§ E40 Expenses and budget.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each allotment period for the maintenance and functioning of the board and committee and for such other purposes, as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The committee shall file a proposed budget of expenses and rate of assessment with the Secretary as soon as practicable after the beginning of the fiscal year.

§ E41 Assessments.

Each handler shall pay to the committee, upon demand, with respect to hatching eggs handled by him, his pro rata share of all expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each allotment period. Each handler's pro rata share shall be the rate of assessment per hundred hatching eggs fixed by the Secretary, but such assessment shall not in any event exceed $.25 per 100 hatching eggs. At any time during or after the fiscal year the Secretary may increase the rate of assessment to cover unanticipated expenses or a deficit in the anticipated number of eggs handled. In order to provide funds to carry out the functions of the board and committee, the committee may accept advance payments from any handler and such shall be credited towards assessments levied pursuant to this section against such handler. The payment of expenses for the maintenance and functioning of the board and committee may be required throughout the period during which this part is in effect and irrespective of whether particular provisions thereof are suspended or become inoperative, or whether volume regulation is in effect in the allotment period.

§ E42 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately and to the extent practical to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal years as a reserve: *Provided,* That funds already in the reserve do not equal approximately one fiscal year's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal year, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary and appropriate to vest in the committee full title to all of the property, funds, and claims vested in such manner pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members, thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

MARKETING POLICY

§ E45 Marketing policy.

(a) Prior to the beginning of each allotment period, or, for the initial allotment period, as soon as practicable, the board shall prepare and submit to the Secretary, through the committee, a report setting forth its general marketing policy for the allotment period. Notice of the board's marketing policy shall be given promptly by reasonable publicity to producers and handlers. In the board's considerations and the report to the Secretary through the committee, the board shall include consideration of the probable supply of and demand for market turkeys for the ensuing turkey marketing year, including estimated opening inventory of market turkeys in all forms and desirable carryout inventory thereof at the end of such turkey marketing year, the number of hatching eggs which probably should be set in the allotment period to ensure a sufficient supply of market turkeys for consumers, achieve the objectives of the act with respect to hatching eggs and be in the public interest, and such other factors as the board may deem relevant to any recommendation it may make for regulatory action in the allotment period. The board may include in its marketing policy consideration and report relevant

factors concerning such different regulation by types of hatching eggs for the production of breeder stock, and/or by production regions or districts as may be necessary to give due recognition to differences in production and marketing of hatching eggs in such areas.

(b) Recommendations with respect to specific implementation of the general marketing policy recommended by the board shall be made by the committee from time to time, as circumstances warrant, and the committee's recommendation shall contain the data and information upon which it is based, together with the specific regulatory action recommended.

VOLUME REGULATION

§ E46 Volume regulation.

On the basis of the board or the committee recommendations or other available information the Secretary may establish, for such period or periods as he may prescribe, regulation of hatching eggs by any one or more of the methods hereinafter specified if he determines that regulation by the method or methods employed may tend to effectuate the declared policy of the act. Such regulation may be based upon different desirable quantities established separately for different types of hatching eggs for the production of breeder stock, or for any or all portions of the production area; and when such desirable quantities are established for different types of hatching eggs, for the production of breeder stock, or by regions, the establishment of bases, allotments, or percentages under such regulation for producers or handlers shall be determined on the same basis.

METHOD NO. 1

§ E47 Desirable quantity.

The Secretary may establish the desirable quantity of hatching eggs which all handlers may set, or cause to be set, in any allotment period: *Provided,* That such quantities may subsequently be increased, or diminished, for the allotment period.

§ E48 Allocation bases and allotments.

Whenever the Secretary has established a desirable quantity of hatching eggs to be set in the allotment period, the committee shall pro rate such quantity among handlers of hatching eggs who set or cause their eggs to be set by assigning to each handler an allocation base and an allotment for the allotment period, computed as follows:

(a) *Allocation bases.* Each eligible handler of hatching eggs shall be assigned an allocation base computed, at his option, in one of the following ways.

(1) The total number of the handler's own hatching eggs which the handler set, or caused to be set, in the 12-month period ending September 30, 1961, or such other period as may be prescribed by the Secretary, or

(2) The total number of the handler's own hatching eggs which the handler set, or caused to be set, in the 24-month period ending September 30, 1961, or such other period as may be prescribed by the Secretary which shall be double the period specified under subparagraph (1) of this paragraph, divided by two, or

(3) A handler who set no hatching eggs or caused none to be set in the period designated in subparagraph (1) of this paragraph, or whose setting of eggs in such period was not representative and who can establish that he has a plant and facilities for the hatching of hatching eggs and an established available supply of eggs may be assigned an allocation base by the committee in accordance with regulations recommended by the committee and approved by the Secretary, which shall take into consideration the hatching capacity of the establishment of such handler and his established available supply of hatching eggs for the allotment period.

(b) *Application.* Each handler seeking an allocation base for the allotment period shall, not later than six weeks preceding such allotment period, or prior to such date as the committee may prescribe for the initial allotment period, file with the committee an application therefor on forms prescribed by the committee, which shall provide all pertinent information required by the committee.

(c) *Committee verification.* The committee shall check and determine the accuracy of the information submitted pursuant to this section and shall be authorized to make a thorough investigation of any application. Whenever the committee finds an error, omission, or inaccuracy in any such information, it shall correct the same and shall give the person who submitted such report a reasonable opportunity to discuss with the committee the factors considered in making the corrections. In the event of correction of a base, the allotment assigned to the handler pursuant to paragraph (d) of this section shall likewise be corrected.

(d) *Handler allotments.* Each handler who has an allocation base for the allotment period shall be assigned an allotment of hatching eggs which he may set, or cause to be set, during the allotment period, computed by determining the percentage which such handler's allocation base is of all allocation bases of all handlers and multiplying the desirable hatch as established by the Secretary for the allotment period, by the percentage so computed. The result shall be the handler's allotment for the allotment period and no handler shall set, or cause to be set, a greater number of hatching eggs in the allotment period than the total quantity so alloted to him: *Provided, however,* That a handler who does not set, or cause to be set, his total allotment of hatching eggs within an allotment period, may carry over such unused allotment into the succeeding allotment period, but not more than such percentage of such allotment as may be prescribed by the Secretary thus may be carried over.

(e) *Allotments by periods.* The Secretary may establish, within the quantity or allotment set for all handlers during an allotment period under this section, the portions thereof to be utilized during quarters or other periods of the allotment period by all handlers and the committee shall prorate such amounts among the handlers in the manner prescribed by this section, for apportionment of the allotment for the allotment period.

(f) *Transfer of bases and allotments.* Allocation bases and allotments shall not be transferable except as authorized by regulations recommended by the committee and approved by the Secretary and then only in the following circumstances:

(1) In the event of a transfer of the hatchery, to the person acquiring and continuing the use of such hatchery.

(2) The whole or any part of a base or allotment may not be transferred to any other hatchery, except where fire, flood, or other similar occurrence prevents the use of such hatchery for all or part of the allotment period: *Provided,* That the base or allotment of a handler who caused his eggs to be hatched at a hatchery other than his own in the base period, may be used by that handler at any hatchery.

§ E49 Prohibition against handling in excess of allotment.

No handler shall set, or cause to be set, hatching eggs in excess of his allotment or set hatching eggs without allotment: *Provided,* That a handler with respect to allotments made under paragraph (d) of § 48 may use the unused portion of his allotment for the handling of hatching eggs in a period within the allotment period but only during the ensuing period within such year, and to the extent allowed under paragraph (e) of § 48 a handler may handle in the ensuing allotment period such unused percentage of his allotment as may be authorized by the Secretary in paragraph (d) of § 48.

METHOD NO. II

§ E50 Desirable quantity.

The Secretary may establish the desirable quantity of hatching eggs for the allotment period which all handlers may receive at hatcheries for hatching in the allotment period.

§ E51 Acquisition bases and allotments.

Whenever the Secretary has established a desirable quantity of hatching eggs which may be received at hatcheries for the allotment period, the committee shall prorate such quantity among handlers of hatching eggs by establishing an allocation base and allotment for the allotment period, referrable to each producer of hatching eggs and computed as follows:

(a) *Allocation bases.* Each producer of hatching eggs shall be assigned an allocation base computed at his option in one of the following ways:

(1) The producer's total marketings or use of hatching eggs in the 12-month period ending September 30, 1961 or in such other period as may be prescribed by the Secretary, or

(2) The producer's total marketings or use of hatching eggs in the 24-month period ending September 30, 1961, or in such other period prescribed by the Secretary which shall be double the period

specified in subparagraph (1) of this paragraph; divided by two, or

(3) A producer who produced no hatching eggs in the period designated in subparagraph (1) of this paragraph, or whose production of hatching eggs in such period was not representative, and who can establish that he has facilities for the production of hatching eggs and has breeder hens for that purpose, may be assigned an allocation base by the committee in accordance with recommendations made by the committee and approved by the Secretary, which shall take into consideration his establishment's production capacity and his established available breeder hens for the allotment period.

(b) *Application.* Each producer seeking an allocation base for the allotment period shall, not later than 6 weeks preceding such allotment period, or prior to such date as the committee may otherwise prescribe, file with the committee an application therefor on forms prescribed by the committee, which shall supply all pertinent information required by the committee.

(c) *Committee verification.* The committee shall check and determine the accuracy of the information submitted pursuant to this section and shall be authorized to make a thorough investigation of any application. Whenever the committee finds an error, omission, or inaccuracy in any such information, it shall correct the same and shall give the person who submitted such report a reasonable opportunity to discuss with the committee the factors considered in making the corrections. In the event of correction of a base, the allotment assigned to the producer pursuant to paragraph (d) of this section shall likewise be corrected.

(d) *Allotments.* Each producer who has an allocation base for the allotment period shall be assigned an allotment of hatching eggs which handlers may acquire during the allotment period, computed by determining the percentage which such producer's allocation base is of all allocation bases of all producers, and multiplying the desirable quantity to be acquired by all handlers, as established by the Secretary for the allotment period, by the percentage so computed. The result shall be the producer's allotment for the allotment period and no handler or handlers may acquire a greater number of hatching eggs from such producer in the allotment period than the total quantity allotted to such producer.

(e) *Allotments by period.* Whenever the Secretary finds from the recommendations and information supplied by the committee, or from other available information, that such regulation may tend to effectuate the declared policy of the act, he may establish, within the quantity or allotment to be acquired by all handlers during an allotment period, the portions thereof to be acquired during quarters or other periods of the allotment period by all handlers and the committee shall prorate such amounts among the producers in the manner prescribed by the foregoing paragraphs for apportionment of the allotment for the allotment period.

(f) *Transfer of bases and allotments.* Allocation bases and allotments shall not be transferrable except as authorized by regulations recommended by the committee and approved by the Secretary and then only in the following circumstances:

(1) In the event of a transfer of the producer's entire production facilities, to the person acquiring and continuing the use of such facilities.

(2) The whole or any part of a producer's base or allotment may not be transferred to any other producer, except where fire, flood, or other similar occurrence prevents the use of the original producer's production facilities for all or part of the allotment period.

METHOD NO. III

§ E52 Desirable free quantity.

The Secretary may establish the desirable free quantity of hatching eggs which all handlers may set at their hatcheries, for their own account or for others, in such period or periods as he may prescribe.

§ E53 Percentages.

Whenever the Secretary concludes that the volume of hatching eggs to be set by all handlers, in any period or periods for which the Secretary has established a desirable free quantity of hatching eggs, probably will exceed such desirable free quantity he may establish free and surplus percentages applicable to all hatching eggs received by handlers at hatcheries within such period or periods, which shall total 100 percent of the hatching eggs. If the Secretary determines that such percentages should be modified within such period or periods, appropriate new percentages may be established and the applicable surplus may be either increased or decreased within any such period.

§ E54 Restrictions on handling.

Whenever free and surplus percentages have been established by the Secretary, for a period or periods, each handler operating a hatchery shall withhold from setting for hatching, from each lot of hatching eggs received for hatching at such hatchery, a quantity of eggs computed by multiplying the total number of hatching eggs in each such lot by the applicable surplus percentage. All hatching eggs so withheld from setting shall not thereafter be set for hatching by such handler, or any other person, but shall be disposed of in such manner and subject to such safeguards as the committee, with the approval of the Secretary, may prescribe. For purposes of this provision each day's receipts of hatching eggs at the hatchery from any person, or each day's receipts of eggs of the handler's own production, shall be a separate lot.

CERTIFICATION OF ALLOTMENTS

§ E55 Certification of allotments.

The committee, with the approval of the Secretary, shall establish by regulation such means of certification with respect to allotments of handlers or producers as may be required to effectuate the purposes of any regulation issued under this part.

RESEARCH AND DEVELOPMENT

§ E56 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, and distribution of hatching eggs. The expenses of such projects shall be paid from funds collected pursuant to § 41.

UNFAIR TRADE PRACTICES

§ E57 Authorization for prohibition of unfair trade practices.

(a) Whenever the Secretary finds, upon recommendation of the committee or other information, that continuance of certain unfair practices in trade channels would tend to interfere with the achieving of the objectives of this part, he may prohibit handlers from using such practices, for any period or periods.

(b) Prior to any such practices being prohibited in any period, the committee shall recommend, for the approval of the Secretary, such rules and procedures and such record keeping requirements as are necessary to administer these prohibitions and obtain compliance therewith.

REPORTS AND RECORDS

§ E60 Reports.

(a) *Regular monthly reports.* On or before the fifth day of each month, each handler shall report on forms prescribed by the committee, his handlings and settings of hatching eggs for the preceding month, providing such information with respect thereto as the committee may prescribe.

(b) *Other reports.* Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information as may be necessary to enable it to exercise its powers and perform its duties under this part.

§ E61 Records.

Each handler shall maintain such records pertaining to all hatching eggs handled as will substantiate the required reports and such others as may be prescribed by the committee. All such records shall be maintained for not less than five years after the termination of the allotment period to which such records relate or for such lesser period as the committee may direct.

§ E62 Verification of reports and records.

For the purpose of assuring compliance with record keeping requirements and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized employees, shall have access to any premises where applicable records are maintained, where hatching eggs are handled, and, at any time during reasonable business hours, shall be permitted to inspect such handler premises, and any and all records of such handlers with respect to matters within the purview of this part.

§ E63 Confidential information.

All reports and records furnished or submitted by handlers to, or obtained by the employees of the committee which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall at all times be kept in the custody and under the control of one or more employees of the committee, who shall disclose such information to no person other than the Secretary.

MISCELLANEOUS PROVISIONS

§ E70 Rights of the Secretary.

The members of the committee and board (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ E71 Personal liability.

No member or alternate member of the committee or board, nor any employee, representative, or agent of the committee shall be held personally responsible, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ E72 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ E73 Derogation.

Nothing contained in this subpart, is or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ E74 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart, shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ E75 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ E76 Effective time.

The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 77.

§ E77 Termination or suspension.

(a) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions obstruct or do not tend to effectuate the declared policy of the act.

(b) *Referendum.* The Secretary shall terminate the provisions of this subpart on or before the ------ day of ---------- of any ------ year whenever he is required to do so by the provisions of section 8c(16)(B) of the act. The Secretary may, at any time he deems it desirable, hold a referendum of producers to determine whether they favor termination of this subpart. If the Secretary receives a recommendation, adopted by the board, requesting the holding of such a referendum he shall hold such referendum. The results of any such referendum shall be announced by the Secretary by ---------- of the ------ year in which held.

(c) *Termination of act.* The provisions of this subpart shall terminate, in any event, upon the termination of the act.

§ E78 Procedure upon termination.

Upon the termination of this subpart, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this subpart. Any person to whom funds, property, or claims have been transferred or deliverd by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

§ E79 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ E80 Amendments.

Amendments to this subpart may be proposed, from time to time, by any person or by the committee.

Proposed Marketing Agreement and Order Regulating the Handling of Turkeys

DEFINITIONS

§ T1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ T2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 stat. 31, as amended: 7 U.S.C. 601–674).

§ T3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ T4 Production area.

"Production area" means the 50 states of the United States and the District of Columbia.

§ T5 Turkey.

"Turkey" means fresh whole turkeys slaughtered within the production area for the production of meat.

§ T6 Handling.

"Handling" means the slaughtering of turkeys for the production of meat and the disposition, storing or further processing of turkeys resulting from such slaughter.

§ T7 Handler.

"Handler" is a person engaged in the handling of turkeys.

§ T8 Producer.

"Producer" means any person directly or indirectly engaged in the commercial production of turkeys and who (a) has a proprietary interest in the turkeys or (b) who in a proprietary capacity operates and controls the facilities for the production of turkeys and produces turkeys with such facilities: *Provided,* That for the purposes of this part, if two or more persons are producers with respect to the same turkeys their respective percentage shares in the turkeys for the purposes of this order shall be deemed to be an amount of turkeys equal to the total number of turkeys so produced divided by the number of persons who are producers thereof, unless a written

contract between the parties relating to such production submitted to the Secretary or the Committee provides for a different percentage distribution of interest.

§ T9 Type or breed.

"Type" or "Breed" are synonymous and mean such classification of turkeys as the committee may recommend and the Secretary approve.

§ T10 Board.

"Board" means the Turkey Advisory Board established pursuant to § 20.

§ T11 Committee.

"Committee" means the Turkey Committee established pursuant to § 24.

§ T12 Fiscal year.

"Fiscal year" means the 12-month period beginning October 1 of each year and ending on September 30 of the following year, or such other period as may be recommended by the committee and approved by the Secretary.

§ T13 Quantity.

"Quantity" means the eviscerated (ready to cook) weight of turkeys, or the equivalent thereof as to any turkeys dressed for market not ready to cook.

TURKEY ADVISORY BOARD

§ T20 Establishment and membership.

A turkey advisory board (herein referred to as the "board") shall be established, consisting of 60 members, of whom 57 shall be selected to represent various states and regions, as listed below:

California-Nevada-Hawaii	6
Minnesota	6
Iowa	4
Wisconsin	3
Virginia-West Virginia	3
Missouri	3
Texas	3
Indiana	2
Utah and Arizona	2
Ohio	2
Arkansas	2
North Carolina	2
Colorado-New Mexico	1
New England States	1
Georgia-Florida	1
Alaska-Washington	1
Oregon	1
Pennsylvania	1
Oklahoma	1
Michigan	1
Nebraska	1
North Dakota	1
Illinois	1
Kansas	1
South Dakota	1
Kentucky-Tennessee	1
New York	1
Delaware-Maryland-New Jersey	1
South Carolina	1
Montana-Idaho-Wyoming	1
Alabama-Mississippi-Louisiana	1

The remaining three members shall be representatives-at-large and shall be selected at the discretion of the Secretary. Each member of the board shall have an alternate member selected in the same manner as for members.

§ T21 Term of office.

Members and alternate members of the board shall serve for terms of three years ending on September 30: *Provided,* That the term of office of the initial board shall be three years for one-third of the members and their alternates, two years for one-third of the members and their alternates, and for the remaining one-third of the members and their alternates shall be from the effective date of this part to September 30, 1962: *Provided,* That each such member and his alternate shall serve until his successor is selected and qualified.

§ T22 Nomination.

Nominees for membership on the Board shall be made at nomination meetings called and supervised by the Committee and held in and for each of the states or groups of states specified in § 20 and reasonable publicity shall be provided for such nomination meetings by the committee. Only producers or handlers shall be eligible to vote and each such person shall have but one vote. Three nominations shall be made for each member position, which shall also be deemed nominations for such member's alternate. All nominations shall be certified by the committee to the Secretary as soon as practicable and after the initial appointment of the board, no later than September 1 immediately preceding the commencement of the term of office for the position for which a nomination is certified. Such certification shall include, for each nominee, a brief summary of his experience and current association with the turkey hatching egg or turkey industry. For the purpose of obtaining nominations for the initial board, the Secretary shall perform the functions of the committee.

§ T23 Duties.

The duties of the board shall consist of selecting from among its members a chairman and other officers, establishing procedures for performing its functions, the making of nominations for membership on the committee, the certifying of such nominations to the Secretary, the making of recommendations with respect to marketing policy, and the consideration of such other matters as it deems proper or as the committee or the Secretary may request.

TURKEY ADMINISTRATIVE COMMITTEE

§ T24 Establishment and membership.

A Turkey Administrative Committee (herein referred to as committee) is hereby established to administer the terms and provisions of this part. Such committee shall consist of 19 members. For each member there shall be an alternate member.

§ T25 Eligibility.

No person shall be selected or continue to serve as a member or alternate member of the committee unless he is serving as a member or alternate member of the board.

§ T26 Term of office.

Members and alternate members of the committee shall serve for terms of one year ending on September 30, the initial term beginning with the effective date of this part and ending on September 30, 1962, but each such member and alternate member shall continue to serve until his successor is selected and has qualified.

§ T27 Nomination.

The board shall nominate from among its members and alternate members 38 nominees for appointment as members and alternate members of the committee. All such nominations for the committee shall be certified by the board to the Secretary as soon as practicable following the selection of board members by the Secretary. For the purposes of initial nominations the Secretary may consider nominations made by nominees for board membership.

§ T28 Powers.

The committee shall have the following powers:

(a) To administer the terms and provisions of this part;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary, complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ T29 Duties.

The committee shall have among others the following duties:

(a) To act as intermediary between the Secretary and any producer or handler.

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions and these shall be subject to examination by the Secretary at any time.

(c) To investigate and assemble data on the production, handling, and marketing of turkey hatching eggs and turkeys and to make recommendations concerning the issuance of regulations pursuant to this part.

(d) To submit to the Secretary or the board such available information with respect to turkey hatching eggs and turkeys as may be requested and such other information as the committee may deem desirable and pertinent;

(e) To select from among its members officers other than the chairman and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(f) To appoint or employ such other persons as it may deem necessary and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by a certified public accountant at least once each fiscal year and at such other times as the committee may deem necessary or as the Secretary may request, to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(h) To prepare and submit to the Secretary monthly statements of the financial operations of the committee and to make such statements together with the minutes of the meetings of said com-

mittee and the board available for inspection at the offices of the committee by producers and handlers;

(i) To give the Secretary the same notice of meetings of the committee and the board as is given to members;

(j) To investigate compliance with and to use means available to the committee to prevent violation of the provisions of this part; and

(k) To establish with the approval of the Secretary such rules and regulations as are necessary or incidental to administration of this subpart, as are consistent with its provisions, and as would tend to accomplish the purposes of this subpart and the act.

BOARD AND COMMITTEE

§ T30 Selection.

The Secretary shall select and appoint members and alternate members of the board and the committee in the numbers and with the qualifications specified in this subpart. Such selections may be made from the nominations certified by the committee and the board or from other producers and handlers: *Provided,* That the Secretary in making such selections and appointments shall give due recognition to hatching egg and turkey producers, including consideration of the size, nature, and location of their production operations, and reasonable handler representation with a view to the extent possible and practicable to have representation from all segments of the industry.

§ T31 Failure to nominate.

In the event a nominee for any member or alternate member position is not certified pursuant to and within the time specified in this subpart, the Secretary may select an eligible person to fill such position without regard to nomination.

§ T32 Qualify by acceptance.

Each person selected by the Secretary as a member or as an alternate member shall, prior to serving, qualify by filing with the Secretary a written acceptance as soon as practicable after being notified of such selection.

§ T33 Alternate members.

An alternate for a member shall act in the place and stead of such member (a) during his absence, or (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

§ T34 Vacancies.

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member, or any need to select as successor through failure of any person selected as a member or alternate member to qualify, shall be recognized by the committee certifying to the Secretary a new nominee within 40 calendar days.

§ T35 Compensation and expenses.

The members of the committee and the board, and the alternate members when acting as members, shall be allowed their necessary expenses, actual or per diem, as approved by the committee. If the Secretary upon recommendations of the board determines that it is necessary for the efficient and effective operation of the board or committee that the members thereof receive reasonable compensation for their services such members may receive such compensation at a rate determined by the Secretary.

§ T36 Procedure.

All decisions of the board and the committee reached at an assembled meeting shall be by majority vote of the members present. All votes in an assembled meeting shall be cast in person and a quorum must be present for a valid decision. A quorum for the board shall consist of not less than thirty (30) members and for the committee not less than ten (10) members. Such quorum requirements may be changed by the Secretary, upon recommendation of the board or committee. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram, to all such members. When any proposition is submitted to be voted on by such method, it must be favored by not less than fourteen (14) members of the committee to constitute action by the committee.

JOINT BOARD AND JOINT COMMITTEE

§ T37 Joint board and joint committee for separate marketing orders.

In the event that the Secretary issues and makes effective separate marketing orders regulating the handling of turkey hatching eggs and of turkeys, the Secretary may appoint the same advisory board and a single committee to function in such capacities for both orders. Such board and committee shall be established, nominated and appointed in the same manner as specified in this order and shall have duties and responsibilities specified in this order for the board and the committee, respectively: *Provided, however,* That in such event, nominations for the joint board shall be made by the handlers and producers of turkey hatching eggs and/or of turkeys, as defined in such marketing orders, and, for purposes of voting on nominations to the board, each person who qualifies in any or all such capacities shall have but one vote: *Provided, further,* That the costs and expenses of the joint board and joint committee shall be prorated equitably between the two orders as directed by the Secretary.

EXPENSES AND ASSESSMENTS

§ T38 Expenses and budget.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each allotment period for the maintenance and functioning of the Board and committee and for such other purposes, as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The committee shall file a proposed budget of expenses and rate of assessment with the Secretary as soon as practicable after the beginning of the fiscal year.

§ T39 Assessments.

Each handler shall pay to the committee, upon demand, with respect to turkeys handled by him, his pro rata share of all expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each allotment period. Each handler's pro rata share shall be the rate of assessment per hunderd pounds of turkey (ready-to-cook) fixed by the Secretary, but such assessments shall not in any event exceed $.20 per 100 pounds of turkey (ready-to-cook). At any time during or after the fiscal year the Secretary may increase the rate of assessment to cover unanticipated expenses or a deficit in the anticipated quantity of turkeys handled. In order to provide funds to carry out the functions of the board and committee, the committee may accept advance payments from any handler and such shall be credited towards assessments levied pursuant to this section against such handler. The payment of expenses for the maintenance and functioning of the board and committee may be required throughout the period during which this part is in effect and irrespective of whether particular provisions thereof are suspended or become inoperative, or whether volume regulation is in effect in the allotment period.

§ T40 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately and to the extent practical to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal years as a reserve: *Provided,* That funds already in the reserve do not equal approximately one fiscal year's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal year, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall ac-

count for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary and appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members, thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

MARKETING POLICY

§ T45 Marketing policy.

At least once each fiscal year the board shall prepare and submit to the Secretary through the committee a report setting forth its general marketing policy for such ensuing period or periods as it may deem appropriate. Notice of the board's marketing policy shall be given promptly by reasonable publicity to producers and handlers. The report shall include any recommendation it may make for regulatory action in such period or periods as well as data and information used by the board in formulating the marketing policy. In developing the marketing policy, the board shall give consideration to the following factors:

(a) The estimated quantity of turkeys held for handlers, for themselves and for the account of the committee, at the beginning of such period or periods.

(b) The probable availability of additional turkeys during such period or periods.

(c) The estimated quantity of turkeys which should be carried over as a desirable inventory into any succeeding period or periods.

(d) The number of turkey hatching eggs set for hatching or the number of poults placed in such period or periods as will reflect probable availability of turkeys in the period or periods for which regulation is proposed.

(e) The estimated market requirements for turkeys for the period or periods for which regulation may be proposed, including in such estimates as separate items probable trade demands for turkeys in the various available outlets for turkeys.

(f) Current prices being received for turkeys and the probable general level of prices to be received for turkeys by producers and handlers.

(g) The trend and level of consumer income and any other factors which may affect consumer demand for turkeys.

(h) Any other pertinent factors bearing on the marketing of such turkeys, including the estimated supply or demand for particular types of turkeys or special problems relating to particular districts or other regional areas within the production area, and

(i) The need for any regulations and recommendations with respect thereto dealing in any manner with any of the foregoing or with the authorities for regulation provided by this order.

Recommendations with respect to specific implementation of the general marketing policy recommended by the board shall be made by the committee from time to time, as circumstances warrant, and the committee's recommendation shall contain the data and information upon which it is based, together with the specific regulatory action recommended.

REGULATIONS

§ T50 Issuance of regulations.

The Secretary shall limit the handling of turkeys as authorized by this section whenever he finds from the recommendations and information submitted by the board or committee, or from other available information, that such regulation may tend to effectuate the declared policy of the act. Such regulations may:

(a) Limit the handling in specified outlets of particular grades, sizes, qualities or packs of any or all types of turkeys during a specified period or periods.

(b) Limit the handling of turkeys in specified outlets by establishing in terms of grade, size or quality, minimum standards of quality.

(c) Fix, or provide methods for fixing, pursuant to § 51 through § 59, free and surplus percentages applicable to the handling of all turkeys handled by handlers and for the pooling of surplus turkeys and the distribution of the proceeds of such pool.

(f) Limit the handling of turkeys differently for different types, for different districts or other regional areas, for different purposes, or any combination of the foregoing, for any period.

VOLUME REGULATION

§ 51 Desirable free quantity.

If, on the basis of the board or committee recommendation or other information, the Secretary concurs in the likely need for volume regulation for turkeys for such period or periods as he may prescribe, he shall establish the desirable free quantity of turkeys which all handlers may freely use or dispose of in such period or periods.

§ T52 Percentages.

Whenever the committee concludes that the volume of turkeys to be handled in a marketing period, or periods, for which the Secretary has established a desirable free quantity of turkeys will exceed such desirable free quantity and that limiting the volume which handlers may freely use or dispose of in such period or periods through establishing free and surplus percentages applicable to all handlings of turkeys, or handlings of turkeys of any grade, size or quality, or any combination thereof may tend to effectuate the declared policy of the act; it shall make recommendations to the Secretary and the Secretary may establish free and surplus percentages applicable to such total handlings, or of any grade, size, or quality thereof, within such period or periods, which shall total 100 percent of the turkeys to which the percentages apply. If the Secretary determines that such percentages should be modified within any such period or periods, appropriate new percentages may be established: *Provided,* That any change in the applicable percentages may be applicable only to the remainder of the period.

§ T53 Set aside.

(a) Whenever free and surplus percentages have been established for a period or periods by the Secretary, each handler shall set aside and withhold from marketing a quantity of turkeys computed by multiplying the quantity of all turkeys handled by him in such period by the applicable surplus percentage. The committee, with the approval of the Secretary, may prescribe the grade, size, or quality of turkeys which shall be set aside to meet the surplus percentage and may require that such surplus percentage be set aside from each lot handled: *Provided,* That for purposes of this provision each day's slaughter of each person's turkeys or of the handler's own turkeys, shall be deemed a separate lot.

(b) The turkeys handled by a handler which are free quantity turkeys may be disposed of by him in any marketing outlet, subject, however, to any grade, size, or quality restrictions otherwise provided by this part.

§ T54 Set aside surplus turkeys.

(a) All turkeys set aside to meet the handler's surplus setaside obligation shall be free and clear of all liens and shall be held by the handler for the account of the committee in compliance with regulations of the committee, approved by the Secretary, until the handler has been relieved of such responsibility by the committee, either by delivery to, or at the direction of, the committee, or otherwise: *Provided,* That any liens outstanding on setaside surplus turkeys at the time of handling shall, when the turkeys are set aside, be subject in every way to this order and the regulations thereunder, and any lienholder with respect to such lien shall, to the extent of such lien, be deemed an assignee of a pro rata interest in the net proceeds of the applicable pool of setaside surplus turkeys.

(b) If so directed by the committee, the handler shall hold such turkeys in storage, in such facilities and under such storage conditions as the committee may prescribe and in such manner as to maintain the stored turkeys in good merchantable condition.

(c) Set-aside turkeys shall be held or stored and containers shall be labeled or otherwise marked in such manner as the committee may prescribe so as to be identifiable at all times and shall be subject to inspection by the committee or its representatives at all times.

(d) Upon 5-day's notice, a handler shall commence delivery to the committee or its designee of any or all setaside turkeys held for the account of the committee and at such rate as may be prescribed.

(e) Handlers shall use good commercial practices in caring for set-aside items

and be liable to the committee for losses of set aside resulting from lack of due care.

§ T55 Set aside by grade, size, or type.

Upon recomendation by the committee and approval by the Secretary, the quantities to be set aside by handlers may be segregated by grade, size, or type and separate pools may be established for the disposition thereof and the distribution of proceeds.

§ T56 Title.

The committee, with respect to turkeys set aside as surplus for the account of the committee, shall be deemed to have title thereto as trustees, and is authorized to negotiate loans on such setaside surplus turkeys for the purpose of paying the cost of processing, storing, and other costs relating thereto, or for making advance payments to producers, or both, with respect thereto.

§ T57 Pooling period.

Any pool of set-aside surplus turkeys shall consist of all surplus turkeys as are set aside by all handlers for any period or periods as the Secretary may prescribe for pooling, but such period shall be not less than one month, nor more than one year in duration. *Provided,* That the pooling period may include one or more set-aside periods.

§ T58 Handler compensation.

Each handler shall be compensated for processing, storing, and such other costs relating to the surplus percentage setaside of turkeys as the committee may deem to be appropriate, in accordance with charges established by the committee with the approval of the Secretary. Such costs shall be borne initially by the handlers but such handlers shall be compensated from each pool for the cost thereof as soon as funds become available from such pool: *Provided,* That such charges as may be established by the committee, with the approval of the Secretary, may be deducted from any moneys owed by handlers to producers, or their successors in interest.

§ T59 Distribution of net proceeds.

The net proceeds from the disposition of any pool of setaside surplus turkeys shall be distributed, after deduction of any expenses incurred by the committee for the receiving, handling, holding, or disposition thereof, to handlers pro rata on the basis of the quantities of their respective contributions to be set aside contained in such pool, for distribution by such handlers to the respective producers of such turkeys, or their successors in interest, in accordance with records of each handler showing their respective contributions to the handler's total setaside.

§ T60 Equity holders.

So that the handler may determine each producer's or his successor's or assignee's interest or equity in the handlers total setaside, each handler who sets aside turkeys to meet his surplus percentage shall determine, or cause to be determined, the type, grade, and quantity of turkeys so set aside which were received from each producer thereof, together with the name and address of such producer, or his successor in interest, the place of production, and any other information which the committee may require to identify all producers of the turkeys so set aside. The handler shall keep a record of all such information pertinent to each pool of setaside surplus turkeys to which it may be pertinent.

DISPOSITION

§ T61 Prohibition.

Except as provided herein setaside surplus turkeys shall not be used or disposed of by any handler.

§ T62 Disposition of surplus by committee.

(a) *General.* The committee shall have the power and authority to sell and dispose of any and all setaside surplus turkeys upon the best terms and at the highest prices attainable consistent with the provisions and objectives of this part, but only in the outlets specified in paragraph (b) of this section.

(b) *Outlets.* The committee may sell or dispose of setaside surplus turkeys in the following outlets:

(1) By sale for disposition in export;

(2) By direct sale to any agency of the United States Government for noncompetitive uses;

(3) In other outlets which the Secretary, upon recommendation of the committee, may specify by regulation to be substantially noncompetitive with those for normal outlets for turkeys, or

(4) To the extent feasibly and consistent with the purposes of this part, the committee may sell or dispose of setaside surplus turkeys in any other outlets, including any normal outlets for turkeys, but only with the approval of the Secretary.

INSPECTION AND CERTIFICATION FOR GRADE OR QUALITY

§ T63 Inspection and certification for grade or quality.

Whenever, for any period or periods regulations are in effect which require the determination of grade or quality of turkeys, the Secretary, upon recommendation of the committee, may, by regulation, require each handler to cause such turkeys to be inspected for grade or quality by any agency or agencies which he may designate, and further require that any such agency certify the grade or quality of such turkeys on forms of certificates to be prescribed by the committee with the approval of the Secretary. The cost of any such services shall be borne by the handler and not by the committees.

RESEARCH AND DEVELOPMENT

§ T64 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, and distribution of turkeys. The expenses of such projects shall be paid from funds collected pursuant to § 39.

UNFAIR TRADE PRACTICES

§ T65 Authorization for prohibition of unfair trade practices.

(a) Whenever the Secretary finds, upon recommendation of the committee or other information, that continuance of certain unfair practices in trade channels would tend to interfere with the achieving of the objectives of this part, he may prohibit handlers from using such practices, for any period or periods.

(b) Prior to any such practices being prohibited in any period, the committee shall recommend, for the approval of the Secretary, such rules and procedures and such record keeping requirements as are necessary to administer these prohibitions and obtain compliance therewith.

REPORTS AND RECORDS

§ T70 Reports.

(a) *Regular monthly reports.* On or before the fifth day of each month, each handler shall report on forms prescribed by the committee, his handlings of turkeys for the preceding month, providing such information with respect thereto as the committee may prescribe.

(b) *Other reports.* Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information as may be necessary to enable it to exercise its powers and perform its duties under this part.

§ T71 Records.

Each handler shall maintain such records pertaining to all turkeys handled as will substantiate the required reports and such others as may be prescribed by the committee. All such records shall be maintained for not less than five years after the termination of the allotment period to which such records relate or for such lesser period as the committee may direct.

§ T72 Verification of reports and records.

For the purpose of assuring compliance with record keeping requirements and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized employees, shall have access to any premises where applicable records are maintained, where turkeys are handled, and, at any time during reasonable business hours, shall be permitted to inspect such handler premises, and any and all records of such handlers with respect to matters within the purview of this part.

§ T73 Confidential information.

All reports and records furnished or submitted by handlers to, or obtained by the employees of the committee which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall at all times be kept in the custody and under the control of one or more employees of the committee, who shall

disclose such information to no person other than the Secretary.

MISCELLANEOUS PROVISIONS

§ T75 Rights of the Secretary.

The members of the committee and board (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ T76 Personal liability.

No member or alternate member of the committee or board, nor any employee, representative, or agent of the committee shall be held personally responsible, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ T77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ T78 Derogation.

Nothing contained in this subpart, is or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ T79 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart, shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ T80 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ T81 Effective time.

The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 82.

§ T82 Termination or suspension.

(a) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions obstruct or do not tend to effectuate the declared policy of the act.

(b) *Referendum.* The Secretary shall terminate the provisions of this subpart on or before the _____ day of _____ of any _____ year whenever he is required to do so by the provisions of section 8c(16)(B) of the act. The Secretary may, at any time he deems it desirable, hold a referendum of producers to determine whether they favor termination of this subpart. If the Secretary receives a recommendation, adopted by the board, requesting the holding of such a referendum he shall hold such referendum. The results of any such referendum shall be announced by the Secretary by _____ of the _____ year in which held.

(c) *Termination of act.* The provisions of this subpart shall terminate, in any event, upon the termination of the act.

§ T83 Procedure upon termination.

Upon the termination of this subpart, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this subpart. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

§ T84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or (b) release any setaside held for the account of the committee nor permit its disposition contrary to the provisions of this subpart, or (c) release or extinguish any violation of this subpart, or any regulation issued under this subpart, or (d) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ T85 Amendments.

Amendments to this subpart may be proposed, from time to time, by any person or by the committee.

PROVISIONS APPLICABLE ONLY TO MARKETING AGREEMENTS FOR EACH PROPOSED PROGRAM

§ 97 Counterparts.

This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 98 Additional parties.

After the effective date of this agreement, any handler may become a party hereto if a counterpart hereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 99 Order with marketing agreement.

Each signatory handler favors and approves the issuance of an order, by the Secretary, regulating the handling of turkey hatching eggs (turkeys) in the same manner as is provided for in this agreement; and each signatory handler hereby requests the Secretary to issue, pursuant to the act, such order.

Copies of this notice of hearing may be obtained at the times and places of hearing or from the Hearing Clerk, Room 112A, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Dated: October 30, 1961.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 61-10456; Filed, Nov. 1, 1961; 8:51 a.m.]

[7 CFR Part 939]

[Docket No. AO-99-A2]

HANDLING OF BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Decision With Respect to Proposed Amendment of Amended Marketing Agreement and Order

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Portland, Oregon, on July 13, 1961, after

notice thereof published in the FEDERAL REGISTER (26 F.R. 5897) on the proposed amendment of the marketing agreement, as amended, and of Order No. 39, as amended (7 CFR Part 939), hereinafter referred to collectively as the "order," regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

On the basis of the evidence introduced at the hearing, and the record thereof, the recommended decision in this proceeding was filed, on September 12, 1961, with the Hearing Clerk, United State Department of Agriculture. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (F.R. Doc. 61–8866; 26 F.R. 8672) on September 16, 1961.

The material issues, findings and conclusions, and the general findings of the recommended decision set forth in the FEDERAL REGISTER (F.R. Doc. 61–8866; 26 F.R. 8672) are hereby approved and adopted as the material issues, findings and conclusions, and the general findings of this decision as if set forth in full herein.

Rulings on exceptions. An exception to the recommended decision was filed, within the prescribed time, by Stephen Lavagnino and Milton A. Nielson, grower and handler member, respectively, representing the Santa Clara District on the Winter Pear Control Committee. Such exception was carefully and fully considered, in conjunction with the evidence in the record, in arriving at the findings and conclusions set forth herein.

Exception was taken to the findings and conclusions of the recommended decisions, and to the effectuating provisions set forth in the recommended amendment, pertaining to amendment of the order to authorize marketing research and development projects on the basis that such projects might include sales promotion and advertising; that such activities would be a duplication of activities already being undertaken by other organizations within the industry, and that the "minority segment" of the Winter pear industry has no safeguard against unlimited assessments to finance such sales promotion and advertising.

Exception also was taken to the recommended provision for exemption of minimum quantities of pears from inspection and certification. The reasons or basis for such exception are not stated but it is contended that should such exemption be made a provision of the order, means should be provided whereby, through referendum procedures, a district could be entirely exempted from any provision of the order.

The recommended decision cited a limited number of examples of activities which might be undertaken under the marketing research and development provision, and further stated that authority for such work should be sufficiently broad to permit any activities of this nature permitted by the act. The act does not authorize provision for sales promotion or advertising, hence no such activities would be authorized under the research and development provision of the order. Moreover, plans for and the expenditure of funds to carry out any research and development projects must be recommended by the Control Committee and approved by the Secretary. This is the usual safeguard provision included in marketing agreements and orders. It has proved to be adequate, and it seems reasonable to believe that it will be a sufficient safeguard against unreasonable assessments in this instance.

The exception is, therefore, denied.

With respect to the exception relative to the exemption of minimum quantities of pears from the inspection and certification provisions of the order and the contention that provision should be made authorizing suspension of order provisions by district, the notice of hearing did not contain any proposal to consider suspension of order provisions by district. Therefore, no such provision was considered, and the hearing record does not contain any evidence to support such provision.

This exception is, therefore, denied.

To the extent that the findings and conclusions contained herein are at variance with any exception pertaining thereto, such exception is denied for the foregoing reasons and on the basis of the findings and conclusions relating to the issues to which the exception refers.

Amendments to the marketing agreement and amendments to the marketing order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clarigeau Varieties of Pears Grown in Oregon, Washington, and California" and "Order Amending the Order Regulating the Handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Buerre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Referendum order. Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby directed that a referendum be conducted among producers who, during the period July 1, 1960, through June 30, 1961 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged in the States of Oregon, Washington, and California, in the production for market of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears to ascertain whether such producers favor the issuance of the said annexed order amending the order regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California. Robert H. Eaton and Allan Henry, Fruit and Vegetable Division, Agricultural Marketing Service, 1218 SW. Washington Street, Portland 5, Oregon, are hereby designated agents of the Secretary to conduct, severally or jointly, said referendum.

The procedure applicable to this referendum shall be the "Procedure for the Conduct of Referenda Among Producers in Connection with Marketing Orders (Except Those Applicable to Milk and its Products) To Be Effective Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (15 F.R. 5176, 19 F.R. 35).

Copies of the aforesaid annexed order and of the aforesaid referendum procedure may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C.

Ballots to be cast in the referendum, and other necessary forms and instructions, may be obtained from any referendum agent or appointee.

It is hereby ordered, That all of this decision, except the annexed amended marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the said marketing agreement are identical with those contained in the annexed order which will be published with this decision.

Dated: October 30, 1961.

JAMES T. RALPH,
Assistant Secretary.

Order[1] Amending the Order, as Amended, Regulating the Handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne Du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California

§ 939.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held at Port-

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and orders have been met.

land, Oregon, on July 13, 1961, upon proposed amendments to the marketing agreement, as amended, and Order No. 39, as amended (7 CFR Part 939), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Buerre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended, and as hereby proposed to be amended, regulates the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which hearings have been held;

(3) The said order, as amended, and as hereby proposed to be amended, is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of such regional production area would not effectively carry out the declared policy of the act; and

(4) The said order, as amended, and as hereby proposed to be amended, prescribes such different terms, applicable to different production and marketing areas, as are necessary to give due recognition to differences in the production and marketing of such pears.

It is therefore ordered, That, on and after the effective date hereof, all handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

1. Section 939.42 *Handler accounts* is revised to read as follows:

§ 939.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the committee, with the approval of the Secretary, may carryover such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed aproximately one fiscal period's expenses. Such reserve may be used (1) to cover any expense authorized under this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. Any such excess not retained in a reserve or applied to any outstanding obligation of the person from whom it was collected shall be refunded proportionately to the persons from whom it was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

2. A new § 939.47 is added as follows:

§ 939.47. Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears.

§ 939.60 [Amendment]

3. Section 939.60 *Inspection and certification* is amended as follows:

a. The following is added at the beginning of the first sentence: "(a) Except as hereinafter provided,".

b. A new paragraph (b) is added as follows:

(b) Any handler may ship pears, on any one conveyance and in such quantity as the committee, with the approval of the Secretary, may prescribe, exempt from the inspection and certification requirements of paragraph (a) of this section.

§ 939.32 [Amendment]

4. The following phrase is deleted from § 939.32(c): "to engage in such research and service activities relative to the handling of pears as may be approved by the Secretary."

[F.R. Doc. 61-10457; Filed, Nov. 1, 1961; 8:51 a.m.]

Agricultural Stabilization and Conservation Service

[7 CFR Parts 906, 986]

[Docket Nos. AO-210-A13-RO1, AO-298-A1-RO1]

MILK IN OKLAHOMA METROPOLITAN AND RED RIVER VALLEY MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Oklahoma City, Oklahoma, on May 23 to May 25, 1961, and was reopened at Tulsa, Oklahoma, on August 8, 1961, pursuant to notices thereof which were issued on May 9, 1961 (26 F.R. 4110) and July 25, 1961 (26 F.R. 6816).

Upon the basis of the evidence introduced at the hearings and the record thereof, the Assistant Secretary, United States Department of Agriculture, on September 22, 1961 (26 F.R. 9073; F.R. Doc. 61-9260) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof. Several of the material issues (Nos. 1 through 4) relate to both Oklahoma Metropolitan and Red River Valley; several (Nos. 5 through 9) relate only to Oklahoma Metropolitan; and several (Nos. 10 through 13) relate only to Red River Valley. No testimony was offered in support of certain proposed amendments as contained in the notice of hearing and, accordingly, they will not receive further consideration.

The material issues on the record are:

1. The pricing of Class I milk;
2. The pricing of Class II milk;
3. Skim equivalent method of accounting;
4. Basic butterfat content;
5. Classification of skim milk and butterfat used for animal feed, and skim milk dumped;
6. Shrinkage;
7. Allocation of packaged sour cream;
8. Base-excess plan;
9. Definition of producer, producer-handler and distributing plant;
10. Deletion of Hardeman and Wilbarger Counties, Texas, from the Red River Valley marketing area;
11. Individual handler pooling;
12. Diversion of producer milk;
13. Determination of plants subject to other orders; and
14. Miscellaneous.

1. *Pricing of Class I milk.* The mechanics of the Class I pricing formula in the Oklahoma Metropolitan order should be revised but the changes should not affect the level of the Class I price relative to the basic formula manufacturing milk price. The changes would also affect the Red River Class I price formula since the price under that order is established at 15 cents over the Oklahoma Metropolitan order price. The supply-demand adjustment to the Class I price in the Oklahoma Metropolitan order should be amended by substituting a new table of standard utilization percentages and reducing the rate of adjustment for each percentage above or below the applicable standard utilization from one cent to one-half cent. The basic butterfat content at which Class I prices are announced should be changed from 4 to 3.5 percent. (This change is discussed under issue No. 4 of this decision.) In order to preserve the present price level with these recommended changes the Class I differential should be reduced seven cents. The changes proposed in the supply-demand adjuster would have increased the Class I price 14 cents in the January 1959–September 1961 period. On the other hand, the proposed change in the basic butterfat content would have re-

duced the Class I price seven cents in the same period.

The Minnesota-Wisconsin manufacturing grade milk price series should not be included and the average pay price at local manufacturing plants should be deleted from the basic formula.

The Central Oklahoma Milk Producers Association and the Pure Milk Producers Association of Eastern Oklahoma petitioned for the reopening of the hearing held in Oklahoma City during May 1961 to consider amending the supply-demand and basic formula provisions of the Oklahoma Metropolitan Order. At the reopened hearing held in Tulsa, Oklahoma, on August 8, 1961, the cooperative associations modified the proposals submitted by them and which were contained in the notice of hearing. Pursuant to the modified supply-demand proposal the table of the standard utilization percentages of the supply-demand provisions would be revised and the rate of adjustment by which the Class I price is either increased or decreased would be changed from one cent to one-half cent. The cooperatives also proposed that the Class I differential be decreased ten cents each month. The effect of their proposed revision of the supply-demand adjustment and the decreased Class I differential would have been to increase the Class I price an average of four cents per hundredweight, during the thirty-three month period, beginning with January 1959 and ending with September 1961. No opposition to the modified supply-demand proposal was offered at the hearing.

The present supply-demand provisions were incorporated into the order on May 1, 1960 and no supply-demand price adjustments occurred the first two months they were effective. Since then, however, the supply-demand provisions have caused a minus adjustment to the Class I price in each month reflecting an increase in producer receipts in relation to Class I sales. Producers recognize that the Class I price must be reduced in response to increasing supply as witnessed by their proposal that the Class I differential be decreased. However, they contend that the present type of adjustment causes contraseasonal, erratic and relatively large month-to-month changes in the Class I price.

The present supply-demand provisions have, in fact, produced some erratic contraseasonal pricing. During the months of May and June 1960 there were no supply-demand adjustments to the Class I price. During the subsequent months of October, November, and December, 1960 the supply-demand adjustment reduced the Class I price 37, 36, and 30 cents respectively. The supply-demand adjustment has reduced the Class I price less this year in the spring months than it did in the preceding relatively short production months. This indicates that the normal utilization percentages which are used in determining the Class I prices in the spring months should be lowered and percentages used in the fall and winter months should be increased.

The supply-demand provisions have also tended to cause relatively large month-to-month changes in the Class I price. During the 5-month period of June to October 1960, the supply-demand adjustment went from 0 to −37; and during the 4-month period of April to July 1961, it went from −21 to −50.

Pending the analysis of evidence introduced at the hearing on which this decision is based, the Secretary of Agriculture on July 27, 1961, issued a suspension order which had the effect of limiting the minus supply-demand adjustment to 32 and 38 cents, respectively, for the months of August and September 1961. Without the suspension action the Class I price would have been reduced 50 cents in both months, the maximum provided in the order.

The supply-demand adjuster proposed by producers would tend to cause less contraseasonality and sensitivity than the present one. However, their proposed adjuster with the 10-cent reduction in the Class I differential would have resulted in an average monthly Class I price increase of 4 cents during the 33-month period of January 1959 through September 1961; and an average increase of 7 cents for the first nine months of 1961. In view of the magnitude of the increase of producer receipts in relation to Class I sales during this period, such an increase in price would be unwarranted.

A new supply-demand adjuster which incorporates the half-cent rate proposed by producers and a new table of standard utilization percentages would tend to eliminate the contraseasonal pricing and relatively large month-to-month changes in price. A reduction of 7 cents in the Class I differential and the change in basic test with the resulting price formula would have resulted in a level of Class I price almost identical to that which has been in effect in the order.

The table of standard utilization percentages now contained in the order, that proposed by producers and that contained herein are, as follows:

Months used in computation	Standard utilization percentages	
	Current	Recommended
October–November	114–122	128–136
November–December	117–125	117–125
December–January	115–123	110–118
January–February	114–122	110–118
February–March	118–126	119–127
March–April	126–134	130–138
April–May	137–145	142–150
May–June	139–147	160–168
June–July	132–140	152–160
July–August	126–134	149–157
August–September	120–128	140–148
September–October	115–123	132–140
Average	122.8–130.8	132–140

The Minnesota-Wisconsin manufacturing grade milk price series should not be included as an alternative used to determine the basic formula price.

The use of the Minnesota-Wisconsin series in the basic formula was proposed by the Central Oklahoma and Pure Milk Producers Associations. Handlers were opposed to its use.

The basic formula for the month is the highest of prices paid at selected Midwest condenseries, the value of milk used in the manufacture of butter and nonfat dry milk, or prices paid at nearby manufacturing plants. The pay price at Midwest condenseries has been the basic formula in 31 of the 32 months ending with August 1961.

The Midwest condensery series has also been the basic formula of most nearby Federal orders. Therefore, inclusion of this new basic formula should be deferred until consideration can be given to making it effective simultaneously in all nearby orders at the same time.

As concluded in the discussion of the Class II price level, the prices paid at the plants included in the list of local plants no longer reflect the value of milk used for manufacturing purposes. Therefore, it would be inconsistent to retain in the formula the prices paid at these plants as an alternative in computing the basic formula.

2. *The pricing of Class II milk.* The Oklahoma Metropolitan and Red River Valley orders should be amended to provide that the price per hundredweight of Class II milk containing 3.5 percent butterfat would be the same as the price for milk used in the manufacture of American cheese, evaporated milk, and butter and by-products, f.o.b. plants, United States, adjusted to 3.5 percent butterfat by the Class II butterfat differential; except that during the months of March through August the price for Class II milk used in the manufacture of American cheese, butter and nonfat dry milk should be 10 cents less. The 10-cent lower price for milk used in the manufacture of American cheese, butter and nonfat dry milk should be effective also from the effective date of this amendment through February 1962.

The Class II price under the Oklahoma Metropolitan order is the average of basic prices reported to have been paid at local manufacturing plants. The Red River Valley Class II price during the months of February through July is also the average pay price of the local plants, and during the months of August through January it is computed on a butter-powder formula.

A cooperative association (Central Oklahoma Milk Producers Association) which represents producers delivering to regulated plants located in Oklahoma City as well as plants regulated by the Red River Valley order proposed that the Class II price for both orders be the same as the average price of milk for manufacturing purposes paid f.o.b. plants, United States, minus 10 cents during the months of February through July. A cooperative association representing producers who deliver to plants located in the Tulsa part of the marketing area (Pure Milk Producers of Eastern Oklahoma) proposed that milk used for cottage cheese and ice cream mix should be priced at the butter and nonfat dry milk component of the basic formula plus 15 cents, and milk used for all other Class II products be priced at the average pay price at local manufacturing plants plus 5 cents. Proprietary handlers proposed a price for all milk used for Class II purposes based upon the value of butter and nonfat dry milk. Each of the proposals would result in some increase in the Class II price levels.

Under the Class II pricing provisions of the orders, the average price during 1960 for each hundredweight of Class II milk containing 3.5 percent butterfat was $2.86 in the Oklahoma Metropolitan area and $2.92 in Red River Valley. Pursuant to the proposal of the Central Oklahoma Milk Producers Association, the average Class II price under both orders during 1960 would have been $3.01. The proposal of Pure Milk Producers Association of Eastern Oklahoma would have resulted in an average price of about $3.11 for milk used for cottage cheese and ice cream, and $2.91 for milk used to produce all other manufactured products. The average Class II price under the handler's proposal would have been approximately $3.00 per hundredweight. The 1960 average Class II price recommended herein would have been $3.06 for products other than American cheese, butter and nonfat dry milk powder. During the February–July period of 1960, the average price for each hundredweight of milk used for American cheese, butter and nonfat dry milk would have been $2.89 or 6 cents higher than the average Class II prices under the orders; and during the February–July 1961 period it would have been $3.02 or 12 cents higher.

Handlers operating distributing plants regulated by the Oklahoma Metropolitan and Red River Valley orders normally arrange for a supply of milk which includes some reserve over their actual volume of Class I sales. When this reserve is not used for Class I purposes it is used for manufacturing purposes and, accordingly, is classified as Class II. The price for this reserve milk should be established at a level low enough to allow for its orderly disposition in manufacturing, but should not be so low as to encourage handlers to develop excessive supplies for manufacturing purposes. While other factors may have contributed to an excessive supply of Class II milk, the Class II price level which has existed in the two markets has been such that some handlers have been encouraged to develop a supply of producer milk much in excess of a reasonable reserve for Class I use. This excess has been utilized for manufacture by pool plants and by plants which function only as manufacturing plants.

During the years 1958, 1959, and 1960, 108 million, 132 million and 146 million pounds, respectively, of producer milk were utilized in Class II in the Oklahoma Metropolitan market. This represents an increase of 35 percent from 1958 to 1960. The increase in producer milk used for Class II in most recent months has been even more pronounced. During the first four months of 1961, almost 57 million pounds of such milk were used as Class II. This represents a 67 percent increase over the amount used for Class II during the first four months of 1960.

A similar situation has prevailed in the Red River Valley market, at least in the Oklahoma portion thereof. During 1959, 22 million pounds of producer milk were used in Class II whereas during 1960, 36 million pounds or 64 percent more were so used. Class II utilization during the months of January through April 1961 increased 58 percent over that during the same months of the previous year.

Producer milk at pool plants which is in excess of fluid milk demand is used primarily in the manufacture of cottage cheese and ice cream. However, some pool plant operators also have facilities for the manufacture of mellorine, condensed skim milk, butter and nonfat dry milk. When producer milk is in excess of that which can be processed with the manufacturing facilities at pool plants, it is moved to nonpool plants which maintain manufacturing facilities.

The nonpool manufacturing plants which usually receive milk from pool plants are: Kraft Foods Company, Sulphur, Oklahoma; Armour Creamery, Chickasha, Oklahoma; Muskogee Dairy Products Company, Muskogee, Oklahoma; and American Foods Company, Miami, Oklahoma. Only cheese is manufactured at the Kraft, Armour and American Foods plants; cheese, butter and nonfat dry milk are manufactured at the Muskogee Dairy plant.

As mentioned previously, three separate proposals were made to amend the Class II pricing provisions. While each of the three was different, each would increase the level of the Class II price, and no testimony was offered by any interested party opposing a Class II price increase.

During 1960, the Central Oklahoma Association received an average price of $3.45 for each hundredweight of milk testing 4 percent butterfat transferred to the Armour plant, and $3.54 per hundredweight for milk transferred during the first four months of 1961. The prices paid to this cooperative for 4 percent milk by the Kraft plant during the same periods were $3.49 and $3.62, respectively. Including dividends, the Central Oklahoma Association received $3.65 for milk moved during 1960 to the plant of another cooperative, and, including anticipated dividends, expects to receive about $3.68 for milk transfered during January through April 1961. The average Class II prices under the Oklahoma Metropolitan order during these same periods were $3.20 and $3.24, respectively; and under the Red River order they were $3.26 and $3.27, respectively.

The other proponent cooperative, Pure Milk Producers Association, has received the Oklahoma Metropolitan Class II price plus amounts ranging from 20 to 34 cents for milk moved by it to the Muskogee Dairy Products plant which receives the bulk of the surplus Grade A milk marketed by the cooperative. Both cooperatives incur some extra cost for hauling milk in some cases, but milk can usually be diverted directly from the farms with no additional hauling cost.

Producer milk used for manufacturing purposes is priced higher under the terms of other nearby Federal orders than under the Oklahoma Metropolitan order. During 1960, the average of surplus class prices for milk containing 3.5 percent butterfat under the Wichita and Southwest Kansas orders was $3.06, $3.14 under Neosho Valley, $2.93 under North Texas and $2.94 in Central West Texas compared with $2.86 in Oklahoma Metropolitan area and $2.92 in Red River Valley.

The average price paid in 1960 by Oklahoma milk plants for manufacturing grade milk used in making American cheese, evaporated milk and butter and by-products was $3.35 for milk containing 4.07 percent butterfat. Adjusted to 3.5 percent using the Class II butterfat differential the price was $2.96. This price represents the average of all Grade C milk and includes some milk for which cooler and volume premiums were paid. Payroll stubs issued by one of the manufacturing plants in the area attest that ungraded milk producers were paid prices ranging from $3.45 to $3.65 for 4 percent cooled milk delivered during the period December 16, 1960, through April 15, 1961.

The price for Class II milk generally should reflect to some extent the premiums being paid for ungraded milk Reserve milk is used regularly each month in Class II products such as cottage cheese and ice cream. The alternative supply of milk for such uses is ungraded milk, but to obtain a regular, dependable supply of ungraded milk, plants in the area pay premiums over posted prices. The pool milk for such regular use should command such premiums also. Pool milk moved to nonpool plants for manufacturing also has been sold at prices higher than the order price in most instances during he months of September through February. The facilities for manufacturing reserve milk in nonpool plants are not taxed as they are during the months of March through August. Witnesses testified they were able to obtain higher prices during the September–February period.

The series of average prices paid for all manufacturing milk in Oklahoma provides a measure of the general value of manufacturing grade milk in the state. Except for milk used in butter, cheese and nonfat dry milk during the months of March through August (discussed later), the price for Grade A milk disposed of for or used in manufacturing (Class II) should be established at a slightly higher level of price to reflect its premium quality.

The appropriate Class II price can be established through a formula using the United States average price paid for manufacturing grade milk. This price is available for pricing milk received during the immediately preceding month whereas the average price received for manufacturing grade milk for the same month in Oklahoma is announced one month later. The United States price averages 10 cents higher than the price paid at Oklahoma milk manufacturing plants. To the extent that the United States average price exceeds the Oklahoma average price it will reflect some premium value for cooled milk in this market.

To accommodate the disposition of excess milk which cannot be absorbed in the usual outlets during the months of seasonally high milk production the price for milk used in butter, cheese and nonfat dry milk should be 10 cents less than the United States average price during March–August.

Though all milk diverted from these Grade A markets to manufacturing plants is eligible for the premium payments, these premiums are not always obtained. The capacity of manufacturing plants located in the area is limited and during flush production months the pressure of relatively heavy supplies forces a downward movement of prices. One manufacturing plant used as a surplus outlet reduced its offering price to a proponent cooperative for surplus Grade A milk by 10 cents for milk received during the month of May. Another proponent cooperative testified to the effect that, because of limited manufacturing facilities, there is considerable pressure on prices obtainable from manufacturing plants in the area. American type cheese, butter and nonfat dry milk are the manufactured dairy products produced at the manufacturing plants in the area which usually receive surplus Grade A milk. To facilitate the marketing of producer milk, the price of Class II milk used in the manufacture of these products during the flush production months of March through August should be established at a slightly lower level than in other months. This will assure the orderly movement of such excess milk off the market. Exceptions were filed to the failure to extend the lower seasonal price for milk used in American cheese over a longer period. It was pointed out that the currently high level of milk production makes the disposition of excess milk difficult even in those months when production is normally low relative to fluid sales. In view of this condition the 10-cent lower price for milk used in making American cheese, butter and nonfat dry milk should apply from the effective date of this order through February 1962.

The order should provide that when milk is transferred between plants and the 10-cent credit is claimed at the transferring plant it may not be claimed at the transferee plant.

3. *Classification of fluid milk products fortified with nonfat milk solids.* "Dietary foods" and other fluid milk products fortified with nonfat milk solids should be classified as Class I up to the weight of an unmodified product of the same nature and butterfat content. The skim milk equivalent of the added solids in excess of such weight should be classified as Class II.

The Oklahoma Metropolitan and Red River Valley orders provide that the skim milk equivalent of nonfat milk solids used in the fortification of fluid milk products be classified as Class I. Handlers proposed that the equivalent be classified as Class II. Producer associations opposed the proposed change in classification on the basis, generally, that nonfat solids would replace producer milk if skim milk equivalent were not accounted for as Class I.

Fortified fluid milk products customarily result from the addition of concentrated nonfat milk solids to milk or skim milk in fluid form to yield a finished product of a higher nonfat solids content than that of an equivalent amount of whole (producer) milk. Reconstituted products, on the other hand, involve the process of "floating" concentrated milk solids in water to yield a weight of product approximately equal to the weight of milk from which the concentrated milk product was first made by the removal of water.

Nonfat dry milk and condensed milk are ordinarily derived from unpriced milk or milk which has been priced as surplus under a Federal order. These products are not necessarily processed from producer milk and may be made from ungraded milk. An economic incentive exists for handlers to substitute, where possible, reconstituted fluid milk products for fluid milk products processed from current receipts of producer milk. Since such substitution would displace an equivalent amount of producer milk in Class I, the application of skim equivalent pricing in this circumstance is economically sound and is necessary to maintain orderly marketing.

The same economic incentive does not exist, however, with respect to the use of nonfat dry milk or condensed skim milk to fortify a fluid milk product. The incentive for handlers to use solids to fortify fluid milk products, primarily derived from producer milk, is in being able to readily meet the specific demands of consumers and thereby to maintain or even increase Class I sales. Until recently, fortified fluid milk products represented a very small proportion of total fluid milk sales. The increased emphasis on low fat diets and the high nutritional value of nonfat solids in relation to their weight are the most often cited reasons for the recent and rapid increase in the demand for added nonfat solids in fluid milk products.

When the skim milk equivalent provision is applied to the fortified milk products, it inflates significantly the utilization and disposition of Class I milk. The inflation in the case of dietary food products results in a Class I classification of about 2½ times the actual volume.

It is practical and administrativly necessary to maintain the skim milk equivalent method of accounting for total receipts and disposition. Therefore, the difference between the volume classified in Class I and the total skim milk equivalent of nonfat milk solids in the product should be assigned to Class II. Accordingly, the order should be amended to classify fortified products as Class I only to the extent of the weight of an unmodified fluid milk product of the same nature and butterfat content. Under this system flavoring materials, not including their water content, should be excluded from the weight of the unmodified fluid milk product.

4. *Basic butterfat content.* The basic butterfat content at which prices are computed and announced under the Oklahoma Metropolitan and Red River Valley orders should be changed from 4.0 to 3.5 percent to better reflect the average butterfat test of Class I sales and producer receipts. The Class I price differentials should be adjusted so that returns to producers for Class I milk will not be affected by the change in basic butterfat tests.

Operators of plants which are pooled pursuant to the terms of each of the subject orders proposed that the basic butterfat tests of the orders be changed be changed to 3.5 percent. Cooperative associations representing the majority of producers serving these plants opposed the change as proposed by handlers primarily because it would lower handlers' cost of Class I milk.

The average butterfat test of homogenized milk, the largest Class I sales item in both markets, is 3.55 percent. During the past several years there has been a gradual decrease in the average butterfat test of total Class I sales in the Oklahoma Metropolitan market. During 1956 the average butterfat test of Class I was 3.796 percent. It was 3.764 percent during 1957, 3.757 percent during 1958, 3.739 for 1959, and 3.737 for 1960, and during the first four months of 1961 the average test was 3.685 percent as compared with an average of 3.709 percent for the first four months of 1960. (For the period prior to May 1957, data for the formerly separate Tulsa and Oklahoma City orders have been combined.)

The average butterfat test of Class I sales in the Red River Valley market is considerably lower than the average of Class I sales in the Oklahoma market. During 1959, the average butterfat test of total Class I sales was 3.469 and in 1960 was 3.436. The average test of sales in the first four months of 1961 was 3.410 compared with 3.466 for the first four months of 1960.

The average butterfat test of producer milk has also been decreasing in both markets. During 1956, the average butterfat test of producer milk delivered to Oklahoma Metropolitan pool plants was 3.863 percent, 3.828 in 1957, 3.814 in 1958, 3.774 in 1959, and 3.723 in 1960. The average butterfat content of Red River Valley producer receipts was 3.765 during 1959 and 3.717 percent during 1960.

The Midwest condensery price, which has been the basic formula price in all but one month during the 33-month period ending with September 1961, is adjusted from 3.5 to 4.0 percent butterfat content by direct ratio. Therefore, unless an adjustment is made in the Class I differential, the change of the basic test to 3.5 percent would decrease the return to producers and the cost to handlers for each hundredweight of Class I sales by seven cents. The additional one-half pound of butterfat in 4 percent milk over that in milk containing 3.5 percent butterfat was valued at 44 cents under the direct ratio conversion based on the January 1959–September 1961 period. The Class I butterfat differential during the same period valued one-half pound of butterfat at 37 cents.

The supply-demand adjustment of the order and other features of the Class I pricing formula will adequately adjust the level of the Class I price in response to changing milk supply and demand conditions. Accordingly, the change in the basic test to 3.5 percent should not, in and of itself, reduce returns to producers for Class I sales.

From January 1959 through September 1961, the use of the announced 3.5 condensery price would have reduced the return to producers and the cost to

handlers for Class I milk an average of 7 cents per hundredweight. The Class I differential should be adjusted by this amount.

Cooperative associations excepted to the proposed change in the basic butterfat content at which prices are announced because their members are now accustomed to prices stated in terms of 4 percent butterfat. This decision does not preclude the publication and announcement of prices at 4 percent butterfat content. Cooperative associations may wish to announce prices in terms of 4 percent as well as 3.5 percent at least during a transitional period.

5. *Classification of skim milk and butterfat used for livestock feed and skim milk dumped.* No changes should be made in the provisions of the Oklahoma Metropolitan order which relate to the classification of skim milk and butterfat used for livestock feed and skim milk dumped. However, the order should permit the market administrator to receive certain reports on receipts and utilization at times other than "on or before the 7th day after the end of each month."

Milk disposed of for livestock feed and skim milk dumped are classified as Class II. Producers proposed that a volume limitation be provided for such Class II utilization and that a plant operator be required to notify the market administrator of his intention to dispose of skim milk and butterfat for livestock feed prior to the disposition and that specific documentation be required of disposition for livestock feed.

The proposed maximum Class II utilization for milk disposed of for livestock feed has been exceeded slightly on a marketwide basis during several months during the 24-month period ending with April 1961 and by more than one percent in seven of the 24 months. The proposed maximum Class II classification for dumped skim milk was not exceeded during the same period on a marketwide basis.

The Agricultural Marketing Agreement Act provides for "Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing minimum prices for each such use classification * * *". The Oklahoma Metropolitan order provides that all milk utilized for other than fluid purposes shall be classified and priced as Class II. The Class II classification includes milk used in manufactured dairy products as well as that used for livestock feed or dumped. A plant operator receives no return for dumped products and there is no evidence that he receives a return for milk used for livestock feed which exceeds the Class II price. However, he pays at least the Class II price for these utilizations. The proposal by producers would require, under certain circumstances, that handlers pay the Class I price for milk dumped or used for livestock feed. This would have the effect of requiring payments for milk dumped and used for feed at a price higher than payments for milk used in the manufacture of butter, cottage cheese and ice cream and would not be consistent with the standards proposed in the Act.

While a plant operator must give prior notification to the market administrator of his intention to dump skim milk, a similar provision is not necessary for milk used for animal feed. The order provides that all milk which is not specifically accounted for as Class II utilization shall be classified as Class I. When milk is claimed to have been dumped, there is no record beyond that of the actual dumpage through which the market administrator can verify the claim. However, when milk is claimed to have been used for feed, records of its receipt and use as feed are involved in the transaction and this claimed utilization can be verified by the market administrator if adequate records are maintained. If the market administrator cannot verify it, he has no alternative, under the terms of the order, and must classify the milk involved as Class I utilization.

It is also not necessary for the order to specifically require the filing of reports, in duplicate, within two days following the disposition of milk for livestock feed. The order now requires that handlers must report to the market administrator information with respect to receipts and utilization as he may prescribe. To clarify this point the order should specify that use in livestock feed is Class II only if adequate records are maintained and submitted.

6. *Shrinkage.* No shrinkage should be allowed on packaged other source milk under the Oklahoma Metropolitan order.

The order prorates total plant shrinkage between other source milk and producer milk receipts. The shrinkage prorated to other source milk is classified as Class II and that prorated to producer milk is classified as Class II up to a maximum of two percent. An association of producers proposed that the proration of shrinkage to other source milk be limited to that received in bulk form.

The shrinkage provision recognizes that there is some plant loss incurred in the receipt, processing, and packaging of milk. However, when other source milk is received in packaged form there will be no processing loss of product at the receiving plant. Any processing loss involved will have occurred at the plant of original receipt, processing and packaging. Therefore, any proration of shrinkage or plant loss to other source milk should be limited to that received in bulk form.

7. *Allocation of packaged sour cream.* The allocation procedure in the Oklahoma Metropolitan order should be amended to provide prior allocation to Class I of packaged sour cream which is priced and pooled under the terms of the order regulating the handling of milk in the Chicago, Illinois, marketing area (Part 941 of this chapter).

A handler who operates a pool plant proposed that packaged sour cream which is priced as Class II under the terms of the Chicago order and which is received at an Oklahoma Metropolitan pool plant be allocated to Class I disposition at the receiving plant. The proponent handler does not process any sour cream at his plant at Tulsa. He receives his supply for this plant in packaged form from the Chicago market. The cost per hundredweight of 19 percent cream classified as Class II under the Chicago order exceeds the cost per hundredweight of 19 percent cream classified as Class I under the terms of the Oklahoma Metropolitan order. A comparison of exhibits prepared by the market administrators of the Chicago and Oklahoma Metropolitan orders shows that the average price of Class II 19 percent cream under the Chicago order was $17.13 during 1960 and $17.39 for the first four months of 1961 whereas the average cost of Class I 19 percent cream under the Oklahoma order was $16.34 and $16.84 for the respective periods.

Under the accounting procedure of the Oklahoma Metropolitan order, when other source packaged fluid milk products are received at a pool plant and disposed of therefrom they become Class I disposition under the Oklahoma order for which the handler is obligated to Oklahoma Metropolitan producers to the extent that producer milk is available. Since the transfer of sour cream priced as Class II under the Chicago order is a regular and recurring arrangement, the daily and seasonal reserve for this supply is, in fact, borne by Chicago producers rather than producers delivering to Oklahoma Metropolitan plants. In recognition of this, the allocation provisions of the order should be modified so that packaged sour cream which is priced as Class II under the Chicago order will receive allocation to Class I before producer milk is so allocated. However, to obviate any abuse, the modification of the allocation provisions, should only be applicable when sour cream is not processed or packaged in the plant during the month.

8. *Base-excess plan.* All references to the base-excess plan should be removed from the Oklahoma Metropolitan order.

In a decision issued April 12, 1960, it was determined that the base-excess plan should be eliminated from the order. However, its termination was defered until after the base paying months of March through June 1960. The Central Oklahoma Milk Producers Association submitted a proposal for inclusion in the notice of hearing on this proceeding which would have had the effect of reinstating the base-excess plan. They did not support their proposal at the hearing; however, proprietary plant operators did. The plant operators testified that a base-excess plan was needed to prevent supply plants which might become associated with the market on the basis of shipments during the months of September through December from adding producers during subsequent flush production months when the plant could be pooled only on the basis of shipments during the previous September–December period. In effect, handlers supported the base-excess plan as a means of restricting entry of new producers rather than as a means of influencing more even seasonality of production.

Because there is no support among producers for the former base-excess plan as a means of encouraging even seasonal production and because the

seasonality of Class I price differentials will tend to encourage even seasonality of production, the base-excess plan should not be reinstated in the order.

At the hearing, a modified base-excess plan was proposed by another cooperative, the Pure Milk Producers Association of Eastern Oklahoma. This modified plan should not be adopted.

The obvious purpose of the modified plan is to reduce deliveries by producers to the market's fluid needs. New producers could not participate fully in the plan until they had delivered to the market for a 3-year period. The plan would, therefore, have a very direct effect upon the supply of milk. Since it is clearly the intent of the statute that the supply of milk shall be adjusted by the price mechanism, the base plan proposed does not comport with the pricing standards of the statute.

Moreover, the plan is not in accord with the intended use of the base-rating authorization of the statute, since the purpose and effect of the plan is to reduce total long run supplies rather than merely the modification of the seasonal distribution of such supplies.

9. *Definition of "producer", "producer-handler" and "distributing plant".* The "producer" definition of the Oklahoma Metropolitan order should exclude dairy farmers whose milk is diverted from a plant regulated by the Red River Valley order. No change should be made in the definition of "producer-handler" other than to delete the reference to "distributing plant". "Distributing plant" should be redefined to include only those plants from which 50 percent of receipts from pool plants and dairy farmers is disposed of as Class I on routes.

The Central Oklahoma Producers Association at times is called upon to find a manufacturing outlet for milk of its member producers which is ordinarily delivered to Red River Valley pool plants. It usually moves the milk to a plant at Stillwater which is pooled under the Oklahoma Metropolitan order where it is used for manufacturing purposes. The most economically efficient method of handling this surplus milk is to move it directly from the farm to the plant at Stillwater. However, any Grade A milk received at the Stillwater plant directly from a farm is producer milk under the terms of the Oklahoma Metropolitan order and must be pooled accordingly. The Association pointed out that the Red River Valley order excludes from its producer definition, any person who is a producer under another Federal milk order and whose milk is diverted to a Red River Valley plant by a cooperative association.

The proposed amendment would facilitate the efficient handling of milk which is surplus on the Red River Valley market and would not be detrimental to the Oklahoma Metropolitan pool. Under the present order provisions, since that milk from Red River Valley diverted to the plant at Stillwater is producer milk under the Oklahoma Metropolitan order it decreases that order's blend and Class I prices. Yet, this milk cannot be considered as a supply furnished to meet Oklahoma Metropolitan demand for Class I milk. Accordingly, in the interest of providing a means to efficiently market Red River Valley surplus milk, the Oklahoma order should be amended to exclude from the producer definition any person who has producer status under the Red River Valley order.

No substantive change should be made in the producer-handler definition of the Oklahoma Metropolitan order but it should be rewritten to delete the reference to "distributing plant". In an amendment action effective May 1, 1960, a distributing plant definition was provided to incorporate specific standards by which association with the Oklahoma Metropolitan market might be determined. A reference to "distributing plant" was made in the producer-handler definition which may be confusing. To eliminate this possibility the producer-handler definition should refer only to a plant which is approved to and does distribute Grade A milk in the marketing area.

The proposal is denied which would include as producer-handlers those persons who do not operate a plant approved for fluid milk distribution by health authorities but who distribute 30 gallons of milk a day in the marketing area. By defining such persons as producer-handlers they would be excluded from the producer definition. The proponent cooperative association testified that dairy farmers selling at least 30 gallons of Grade A milk in the market (such persons are commonly referred to as "juggers") should not be permitted to pool their production which is in excess of their route sales.

No specific evidence was offered as to the extent of such jugging operations nor was any showing made of disorderly marketing conditions.

The provision which specifies the percentages of Class I sales which qualify a distributing plant for pool plant status should be redefined. In part, the Oklahoma Metropolitan order defines as distributing plants those plants from which 50 percent of receipts of Grade A milk from dairy farmers and from pool plants is disposed of as Class I. It was proposed that 50 percent disposition should relate to Class I sales on routes and that packaged Class I receipts from other pool plants should not be included in the 50 percent computation.

The percentages set forth in the distributing plant definition are to provide a means of determining if a plant is primarily engaged in distributing or manufacturing milk. It is the intent that only those plants primarily engaged in supplying Class I milk for the market should participate in the pool. However, because of the wording of the distributing plant definition and the transfer provisions of the order, the intent of the order has been avoided. Milk has been claimed as Class I utilization even though it was used for manufacturing purposes. In addition, packaged milk which is moved from one plant to another which now may be claimed as Class I utilization by both the transferee and transferor plants should be credited only at the plant where it is disposed of on routes.

10. *Deletion of Hardeman and Wilbarger Counties, Texas from the Red River Valley marketing area.* The two counties should not be deleted from the marketing area.

Two handlers, each of whom operated a pool plant at the time the hearing opened in Oklahoma City, proposed that the two counties be deleted from the marketing area. No opposition to the proposal was offered at the original hearing held in Oklahoma City.

Subsequent to the original hearing the two plants were sold to a handler who also operates plants in other parts of Texas. In his brief the new owner opposed the deletion of the two counties. At the reopened hearing held in Tulsa, producers and other handlers whose plants are regulated by the Red River order opposed the deletion of the two counties.

There is no evidence that the deletion of these counties from the marketing area definition would contribute to orderly marketing. Therefore, no change should be made in the marketing area definition.

11. *Individual handler pooling.* The Red River Valley order should retain marketwide pooling as a means of distributing to producers the use value of their milk deliveries.

The Agricultural Marketing Agreement Act of 1937 specifies that an order must provide for (1) the payment of uniform prices for all milk delivered by producers delivering to the same handler depending on the use of the milk by the handler, or (2) the payment of uniform prices for all milk delivered by all producers to all handlers based upon the marketwide use of such milk. The former method of payment is by individual handler pools and the latter by a marketwide pool. The North Texas Producers Association proposed that the Red River Valley change from marketwide to individual handler pooling. Central Oklahoma Milk Producers Association opposed the proposal.

There were 550 producers who delivered milk to Red River Valley pool plants during April 1961, the last complete month prior to the hearing in Oklahoma City. Of these, 270, or approximately 50 percent, were members of the Central Oklahoma Association, and about 80, almost 15 percent were members of the North Texas Association. The remaining 200 producers were either members of a third cooperative association or did not belong to any milk cooperative association.

The utilization of Class I milk varies among plants serving the Red River Valley marketing area. Some plants consistently carry more reserve milk than do other plants. The Class I utilization of producer milk received at plants located in Texas is usually higher than at those located in Oklahoma. The continued use of the marketwide pool under which the lower value of reserve supplies is distributed proportionately among all producers supplying the market will better contribute to milk market stability.

12. *Diversion of producer milk.* The Red River Valley order should permit diversion to nonpool plants of 29 days' production of a producer during each of the months of September through December.

The order now limits diversion to nonpool plants to 10 days' production of a producer during the months of September through December. The Central Oklahoma Association proposed that the order permit diversion of 29 days' production during each of the months of September through December. No testimony was offered in opposition to the proposal.

The need for more liberal diversion has arisen because a pool plant operator whose plant is located in the Ardmore area has added producers beyond those needed for his supply of Grade A milk and the proponent cooperative has been called upon to divert the milk of those producers who are members of the Association. The plant operator has also diverted milk of some of the producers. In order to maintain a market for producers who have regularly served the market additional flexibility in the diversion provision during the months of September through December is needed. The relatively low level of the Class II price which has existed in the market has provided some incentive for the plant operator to add producers beyond his own fluid requirements. The Class II price increase recommended herein should remove this incentive.

13. *Determination of plants subject to other orders.* Whether a plant is regulated by the Red River Valley order or an order regulating another marketing area should be determined on the basis of the area in which the plant distributes the most Class I milk. The basis for determination should be the current month unless the other order regulates an area entirely in Texas and provides that the determination be made on the basis of a different period.

Packaged fluid milk sales from plants currently regulated by the North Texas order extend into the marketing areas of other Federal orders including that of the Red River Valley order. Because of possible fluctuations in sales, the proponent handler testified that the order under which a plant should be regulated be determined on the basis of a three-month moving average of sales rather than on sales within one month. He has made the same proposal for other orders regulating the handling of milk in Texas.

A small increase or decrease in Class I sales by a particular plant within respective Federal areas would cause the plant to be regulated first by one order and then by the other. This could contribute to unstable milk marketing conditions under certain circumstances. However, since the testimony in the record relates only to sales in Texas areas, the Red River order should be so amended only as relating to other orders whose marketing areas are within the State of Texas.

14. *Miscellaneous.*

(a) In a previous amendment action, it was provided that a handler may elect more than one accounting period within a month but several corresponding references to "month" were not changed to "accounting period". They should be changed to avoid misinterpretation.

(b) Class I and Class II prices of both orders should be rounded to the nearest cent rather than the nearest tenth of a cent. An association of producers proposed this amendment and no opposition testimony was offered. The proposed amendment, on average, should result in no change in cost of milk to handlers or returns to producers and will facilitate billings and payments.

(c) The subparagraph reference (2) omitted in error from § 986.41(a)(1) in the original issuance of order No. 86 should be inserted. The decision issued September 12, 1958 (23 F.R. 7225) clearly states the intention to exclude from Class I, fluid milk products disposed of to commercial food manufacturing plants which do not dispose of fluid milk products.

(d) Several plants which are listed in the Midwest condensery series of the basic formula are no longer operating. They should be deleted.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto, and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the proposed marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreements and orders. Annexed hereto and made a part hereof are four documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Oklahoma Metropolitan Marketing Area", "Order Amending the Order Regulating the Handling of Milk in the Oklahoma Metropolitan Marketing Area", "Marketing Agreement Regulating the Handling of Milk in the Red River Valley Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Red River Valley Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreements are identical with those contained in the orders as hereby proposed to be amended by the attached orders which will be published with this decision.

Referendum order, determination of representative period; and designation of referendum agent. It is hereby directed that referenda be conducted to determine whether the issuance of the attached orders amending the orders regulating the handling of milk in the Oklahoma Metropolitan and Red River Valley marketing areas, is approved or favored by the producers, as defined under the terms of the orders, as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing areas.

The month of August is hereby determined to be the representative period for the conduct of such referenda.

Richard E. Arnold is hereby designated agent of the Secretary to conduct such referenda in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referenda to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on October 27, 1961.

JAMES T. RALPH,
Assistant Secretary.

Order[1] *Amending the Order Regulating the Handling of Milk in the Oklahoma Metropolitan Marketing Area*

§ 906.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), public hearings were held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Oklahoma Metropolitan marketing area. Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the Oklahoma Metropolitan marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended as follows:

§ 906.7 [Amendment]

1. Delete § 906.7(c), and insert therefor the following:

(c) Which receives milk from dairy farmers who would be producers if this plant qualified as a pool plant, or Grade A milk in bulk from other pool plants, and from which an amount equal to 50 percent of such receipts is disposed of as Class I milk on routes, and an amount equal to at least 5 percent of such receipts is disposed of as Class I milk on routes in the marketing area.

§ 906.12 [Amendment]

2. Delete the period at the end of § 906.12, and add the following: "or any person with respect to milk produced by him which is deemed to have been received at a plant which is subject to full regulation by the order regulating the handling of milk in the Red River Valley marketing area (Part 963 of this Chapter), if such person is designated as a producer under the Red River Valley order."

3. Delete § 906.15 and insert therefor the following:

§ 906.15 Producer-handler.

"Producer-handler" means any person who produces milk and operates a plant which meets the standards in § 906.7(a) from which Class I milk is disposed of on routes in the marketing area, but who receives no milk from producers or other dairy farmers.

§ 906.14 [Amendment]

4. In § 906.14 delete the word "month" and substitute therefor "accounting period".

§§ 906.16, 906.17, 906.18, 906.19 [Deletion and Redesignation]

5. Delete § 906.16 and renumber §§ 906.17, 906.18, and 906.19 as §§ 906.16, 906.17 and 906.18, respectively.

6. Delete § 906.40 and substitute therefor the following:

§ 906.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received during each accounting period by a handler which is required to be reported pursuant to § 906.30 shall be classified by the market administrator pursuant to the provisions contained in §§ 906.41 to 906.46. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

7. Delete § 906.41 and substitute therefor the following:

§ 906.41 Classes of utilization.

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in the form of fluid milk products except:

(i) Fluid milk products classified as Class II pursuant to paragraph (b) (2), (3), (4), and (8) of this section, and

(ii) Fluid milk products which are fortified with nonfat milk solids shall be Class I in an amount equal only to the weight of an equal volume of an unfortified product of the same butterfat content; and

(2) Not specifically accounted for as Class II utilization; and

(b) Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product;

(2) In cream stored and frozen;

(3) Disposed of for livestock feed if records and reports satisfactory to the market administrator to verify such use are maintained and submitted as required;

(4) In skim milk dumped after prior notification to, and opportunity for verification by the market administrator;

(5) In actual shrinkage of producer milk in an amount not to exceed one-half percent of the total pounds of skim milk and butterfat received directly from producers' farms, plus one and one-half percent of the total pounds of skim milk and butterfat in milk, skim milk and cream in bulk fluid form received at a pool plant from both producers and other pool plants and which were not disposed of in bulk to the pool plant of another handler;

(6) In shrinkage of bulk other source milk;

(7) In inventory as fluid milk products at the end of the accounting period; and

(8) The weight of skim milk in fortified fluid milk products which is not classified pursuant to paragraph (a)(1)(ii) of this section.

§§ 906.33, 906.43, 906.45 [Amendment]

8. In §§ 906.33(d) and 906.43(b), delete the word "month" and in § 906.45 delete the word "monthly" and substitute therefor "accounting period".

§ 906.42 [Amendment]

9. Delete § 906.42(b) and substitute therefor the following:

(b) Assign the shrinkage of skim milk and butterfat pro rata between producer milk and bulk other source milk.

§ 906.46 [Amendment]

10. Delete § 906.46(a)(5) and substitute therefor the following:

(5) Subtract from the remaining pounds of skim milk:

(i) In series beginning with Class II milk, the pounds of skim milk in other source milk received in fluid milk products which were subject to the Class I pricing and payment provisions of another order issued pursuant to the Act; but which are not subtracted from Class I pursuant to (ii) of this subparagraph.

(ii) In Class I milk, the pounds of skim milk in sour cream (in case of fortified sour cream, the pounds of an equivalent volume of unfortified sour cream) received in packaged form if such sour cream is priced as Class II pursuant to Part 941 of this chapter and if no sour cream is processed and packaged in the plant during the accounting period.

§ 906.45 [Amendment]

11. Delete the second sentence in § 906.45.

12. Delete § 906.50 and substitute therefor the following:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

§ 906.50 Basic formula price to be used in determining Class I price.

The basic formula price to be used in determining the price per hundredweight of Class I milk shall be the highest of the prices computed pursuant to paragraphs (a) and (b) of this section for the preceding month, rounded to the nearest whole cent.

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department:

PRESENT OPERATOR AND LOCATION

Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus values pursuant to subparagraphs (1) and (2) of this paragraph;

(1) From the simple average as computed by the market administrator of the daily wholesale selling prices (using the mid-point of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago, as reported by the Department during the month, subtract 3 cents, add 20 percent thereof and multiply by 3.5; and

(2) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, multiply by 8.2.

§ 906.51 [Amendment]

13. In § 906.51(a) delete "$1.55" and "$1.95" and substitute therefor "$1.48" and "$1.88", respectively.

14. Delete the table of standard utilization percentages in § 906.51(a)(2)(iii) and substitute therefor the following:

Month for which price applies	Months used in computation	Standard utilization percentage	
		Minimum	Maximum
January	October-November	128	136
February	November-December	117	125
March	December-January	110	118
April	January-February	110	118
May	February-March	119	127
June	March-April	130	138
July	April-May	142	150
August	May-June	160	168
September	June-July	152	160
October	July-August	149	157
November	August-September	140	148
December	September-October	132	140

15. Delete § 906.51(a)(3) and substitute therefor the following:

(3) For a minus "net deviation percentage" the Class I price shall be increased and for a plus "net deviation percentage" the Class I price shall be decreased as follows:

(i) One-half cent times each such percentage point of net deviation; plus

(ii) One-half cent times the lesser of;

(a) Each such percentage point of net deviation, or

(b) Each percentage point of net deviation of like direction (plus or minus, with any net deviation percentage of opposite direction considered to be zero for purposes of computations of this subparagraph) computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding; plus

(iii) One-half cent times the least of:

(a) Each such percentage point of net deviation;

(b) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding, or

(c) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the second preceding month.

(iv) Less one-half cent, if necessary, to round down to the nearest whole cent.

16. Delete § 906.51(b) and substitute therefor the following:

(b) *Class II milk.* The average price reported by the Department for the month for milk of 3.5 percent butterfat used in the manufacture of American cheese, evaporated milk, and butter and by-products, f.o.b. plant, United States: *Provided,* That during the months March through August of each year and for each month from the effective date of this order through February 1962, the price for milk, skim milk and cream used in the manufacture of American cheese, butter and nonfat dry milk shall be 10 cents less, subject to the following limitations:

(1) For the purpose of computing the Class II price credit, the volume of milk used in a pool plant for the manufacture of American cheese, butter, and nonfat dry milk shall be reduced by the volume of milk received from other handlers under this order or any other order, on which a similar price credit has been allowed.

(2) Milk used in the manufacture of American cheese, butter and nonfat dry milk within a nonpool plant which has received milk from a handler(s) regulated under this order or any other order which permits a similar price credit, shall be prorated among such handlers, for the purpose of determining the amount of price credit to be allowed such handlers.

§ 906.52 [Amendment]

17. In § 906.52 delete "4.0 percent" wherever it appears and substitute therefor "3.5 percent".

§§ 906.65, 906.66 [Deletion]

18. Delete §§ 906.65 and 906.66 and the heading "Determination of Base" which precedes § 906.65.

§ 906.71 [Amendment]

19. In § 906.71 delete "4.0 percent" wherever it appears and substitute therefor "3.5 percent".

20. Delete that part of § 906.72 which precedes paragraph (a) and substitute therefor the following:

§ 906.72 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for all milk of 3.5 percent butterfat content received from producers as follows:

§ 906.73 [Deletion]

21. Delete § 906.73.

§ 906.80 [Amendment]

22. In § 906.80(a) delete the reference "§ 906.73".

23. Delete § 906.80(d)(1)(ii)(*d*) and renumber § 906.80(d)(1)(ii)(e) as § 906.80(d)(1)(ii)(*d*).

§ 906.81 [Amendment]

24. In § 906.81 delete "(except that during the months of March through June 1960, the deduction shall be limited to base milk)."

§ 906.82 [Amendment]

25. In § 906.82 delete "4.0 percent" and substitute therefor "3.5 percent."

Order[1] Amending the Order Regulating the Handling of Milk in the Red River Valley Marketing Area

§ 986.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto, and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), public hearings were held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Red River Valley marketing area. Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Red River Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

§ 986.40 [Amendment]

1. Delete § 986.40 and substitute therefor the following:

§ 986.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month by a handler which is required to be reported pursuant to § 986.30 shall be classified by the market administrator pursuant to the provisions contained in § 986.41 to § 986.46, inclusive. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 986.41 [Amendment]

2. Delete § 986.41(a) and substitute therefor the following:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in the form of fluid milk products except:

(i) Fluid milk products classified as Class II pursuant to paragraph (b) (2), (4), and (7) of this section, and

(ii) Fluid milk products which are fortified with nonfat milk solids shall be Class I in an amount equal only to the weight of an equal volume of an unfortified product of the same butterfat content; and

(2) Not specifically accounted for as Class II milk;

3. Add a new subparagraph (7) to § 986.41(b) to read as follows:

(7) The weight of skim milk in fortified fluid milk products which is not classified in subdivision (a)(1)(ii) of this section.

§ 986.50 [Amendment]

4. Delete § 986.50(b) and substitute therefor the following:

(b) The Class II price shall be the price for Class II milk established under Federal Order No. 6 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

§ 986.51 [Amendment]

5. In § 986.51 delete "4.0 percent" wherever it appears and substitute therefor "3.5 percent."

§ 986.61 [Amendment]

6. Add the following sentence to § 986.61: "Such determination shall be made on the basis of Class I sales during the month unless the other marketing area is entirely within the State of Texas and the order regulating the area provides that the determination be made on the basis of a different period, in which case the same period shall be used in this order".

§ 986.63 [Amendment]

7. In § 986.63(d), delete "10 days' production" and substitute therefor "29 days' production."

§§ 986.71, 986.72, 986.73 [Amendment]

8. In §§ 986.71, 986.72 and 986.73 delete "4.0 percent" wherever it appears and substitute therefor "3.5 percent".

[F.R. Doc. 61-10416; Filed, Nov. 1, 1961; 8:48 a.m.]

[7 CFR Parts 908, 918]

[Docket Nos. AO-243-A5 and AO-219-A9]

MILK IN CENTRAL ARKANSAS AND MEMPHIS, TENNESSEE, MARKETING AREAS

Notice of Extension of Time for Filing Exceptions to Recommend Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Central Arkansas and Memphis, Tennessee, marketing areas, which was issued October 17, 1961 (26 F.R. 9860), is hereby extended to November 6, 1961.

Dated: October 27, 1961, Washington, D.C.

H. L. FOREST,
Director, Milk Marketing Orders Division, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 61-10430; Filed, Nov. 1, 1961; 8:47 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 302]

[Docket No. 13127]

RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Exceptions and Supporting Briefs

Correction

In F.R. Doc. 61-10259, appearing at page 10099 of the issue for Friday, October 27, 1961, the phrase in § 302.31(b)(1) which reads "on motion to strike" should read "no motion to strike".

FEDERAL AVIATION AGENCY

[14 CFR Part 60]

[Reg. Docket No. 942; Draft Release 61-23]

INSTRUMENT FLIGHT RULES

Course To Be Flown; Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (14 CFR Part 405), notice is hereby given that the Federal Aviation Agency has under consideration a proposal which would amend the Civil Air Regulations, Part 60, § 60.45, as hereinafter set forth.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. All communications received prior to January 1, 1962, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Docket Section for examination by interested persons when the prescribed date for the return of comments has expired. Because of the large number of comments anticipated in reply to this notice, we will be unable to acknowledge receipt of each reply.

The proposed revision to § 60.45 *Course to be flown,* is a restatement of the existing rule with exceptions added to more clearly show the applicability of the section in conjunction with other equally applicable sections of Part 60.

The general flight rules of Part 60 contain the air traffic rules of general applicability such as right-of-way, proximity of aircraft, and careless and reckless operation. Section 60.10, applicability of the general flight rules, states, "Aircraft shall be operated at all times in compliance with the following general flight rules and also in compliance with either the visual flight rules or the instrument flight rules, whichever are applicable." Therefore, for proper interpretation, all sections of Part 60 must be read together as a consonant whole.

The intent of § 60.10 is quite clear. Likewise, the language of the visual flight rule sections is such that applicability of these rules in conjunction with

provisions of the general flight rules provides minimum opportunity for misinterpretation. However, this does not hold true for the applicability of § 60.45 of the instrument flight rules in conjunction with the general flight rules.

Section 60.45 requires an aircraft operating IFR in controlled airspace to be flown along the center line of an airway or, when flight is conducted on other routes, to be flown along the direct course between navigational aids or fixes defining the route. Taken by itself, the section is devoid of language which specifically permits deviation from the center line or course when necessary to comply with the general flight rules set forth in §§ 60.12, 60.14 and 60.15. As a result, various interpretations have been given § 60.45 when the pilot was in a position which required noncompliance with this particular section in order to comply with the general flight rules.

The analysis of near-collision reports reveals that a high percentage of these incidents occurred in VFR conditions and involved an IFR aircraft either climbing or descending and a VFR aircraft. A presumed contributing factor to these incidents is the probability that some IFR pilots are not clearing the area during these altitude changes because they feel that § 60.45 does not permit the necessary deviation from the center line. On the other hand, those pilots in the foregoing circumstances that do conduct gentle "S" turns to clear their position, although certainly conducting the safer operation, could be considered as not complying fully with § 60.45 as presently written.

The responsibility of the pilot in these circumstances should be made clear. All pilots, during their elementary flight training, are impressed with the need for first scanning the area toward which they are about to turn, climb, or descend. This fundamental technique of safety, commonly called "clearing the area," becomes especially significant when modern, high-speed aircraft are involved. Pilots who conduct many hours of instrument flying may tend to forget this basic technique when operating on an IFR flight plan in VFR conditions. They may be lulled into a false sense of traffic separation security when operating in VFR conditions on an air traffic control clearance.

It is realized that when minimum IFR separation is being provided by air traffic control, the required maneuvering and resultant deviation from center line could result in less than standard separation between two IFR aircraft. However, this maneuvering is authorized only when operating in VFR conditions, and would be conducted for the sole purpose of conducting a visual search for other traffic. Further, the pilot of an aircraft so maneuvering, by virtue of the fact that he is operating in VFR conditions, is responsible for separation of his aircraft from all others. This responsibility is made very clear in the note appended to § 60.30. Therefore, the possible loss of standard IFR separation in these conditions is considered of small consequence compared to the added safety gained by these clearing turns. It is not possible for a pilot to meet his responsibility to avoid other traffic if these clearing turns are not authorized.

Likewise, the action required by the pilot of an IFR aircraft, when overtaking or otherwise converging with another aircraft which has the right-of-way, should not be subject to question. If weather conditions permit the observation of the other aircraft, the pilot is required by the general flight rules to maneuver as necessary to pass well clear, and therefore must deviate somewhat from the center line. The proposed revision would specifically provide for such maneuvers.

Therefore, to preclude any possible misinterpretation and to avoid the possible inference that the regulations are contradictory, it is proposed to amend § 60.45 to read as follows:

§ 60.45 · IFR course to be flown.

Aircraft operating in controlled airspace shall be flown along the center line of federal airways, or along a direct course between the navigational aids or fixes defining other routes, unless:

(a) Otherwise authorized by air traffic control; or

(b) Maneuvering as necessary to pass well clear of other aircraft; or

(c) In VFR conditions and maneuvering as necessary to visually clear the intended flight path during climb or descent.

This amendment is proposed under the authority of section 307 of the Federal Aviation Act of 1958 (72 Stat. 749, U.S.C. 1348).

Issued in Washington, D.C., on October 18, 1961.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 61-10448; Filed, Nov. 1, 1961; 8:50 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LO, AR–031024, 23.1 WdI]

ARIZONA

Notice of Proposed Withdrawal and Reservation of Lands

The United States Department of Agriculture has filed an application, Serial Number Arizona 031024 for the withdrawal of the lands described below, from location and entry under the General Mining Laws, subject to existing valid claims.

The applicant desires the land for use by the Forest Service to develop the Williams Administrative Site by construction of offices and warehouses for the administration of the Kaibab National Forest in Arizona.

For a period of thirty (30) days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of Interior, P.O. Box 148, Phoenix 1, Arizona.

If circumstances warrant it, a public hearing will be held at a convenient time and place which will be announced. The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in this application are:

GILA AND SALT RIVER BASE AND MERIDIAN

KAIBAB NATIONAL FOREST

Williams Administrative Site

T. 22 N., R. 2 E.,
Sec. 33: SW¼SW¼, S½S½NW¼SW¼.

The area described above aggregates 50 acres.

FRED J. WEILER,
State Director.

[F.R. Doc. 61–10419; Filed, Nov. 1, 1961; 8:45 a.m.]

CALIFORNIA

Notice of Proposed Withdrawal and Reservation of Lands

OCTOBER 26, 1961.

The Bureau of Reclamation, United States Department of the Interior, has filed an application, Serial Number Sacramento 068455 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the general mining and mineral leasing laws, subject to existing valid claims. The applicant desires the land for the construction and operation of the Auburn Unit, American River Division, Central Valley Project.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Room 1000, California Fruit Building, 4th and J Streets, Sacramento 14, California.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

MOUNT DIABLO MERIDIAN

T. 12 N., R. 8 E.,
Sec. 12: Lot 2.
T. 12 N., R. 9 E.,
Sec 4: Lot 1.
T. 13 N., R. 9 E.,
Sec. 2: Lot 18;
Sec. 25: Lot 1, W½NW¼, NW¼SW¼ (excluding lands under M.S. 5488, M.S. 5209, M.S. 5289, M.S. 6129).
T. 13 N., R. 10 E.,
Sec. 2: SE¼SE¼;
Sec. 22: Lot 3;
Sec. 28: NE¼NW¼;
Sec. 30: Lots 8, 11 and 12.
T. 14 N., R. 9 E.,
Sec. 25: SE¼SE¼.

The areas described above aggregate approximately 475.01 acres of Federal land.

WALTER E. BECK,
Manager, Land Office,
Sacramento.

[F.R. Doc. 61–10420; Filed, Nov. 1, 1961; 8:45 a.m.]

[100.7b, Oregon 06764, (23.1)]

OREGON

Notice of Termination of Proposed Withdrawal and Reservation of Land

OCTOBER 25, 1961.

Notice of an application serial No. Oregon 06764, for withdrawal and reservation of lands was published as Federal Register Document No. 59–4053 on page 3891 of the issue for May 14, 1959. The applicant agency has canceled the application in its entirety. Therefore, pursuant to the regulations contained in 43 CFR Part 259, the lands will be at 10:00 a.m. on October 30, 1961 relieved of the segregative effect of the above-mentioned application.

The land involved in this notice of termination is:

WILLAMETTE MERIDIAN, OREGON

T. 9 S., R. 3 E.,
Sec. 9: SW¼SE¼NE¼, S½SW¼NE¼, N½NW¼SE¼.
T. 27 S., R. 2 W.,
Sec. 1: SW¼SW¼, S½NW¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼, SW¼SW¼SE¼.
T. 39 S., R. 2 W.,
Sec. 25: E½W½SE¼NE¼, W½E½SE¼NE¼.
T. 39 S., R. 4 W.,
Sec. 23: N½NW¼NW¼, N½S½NW¼NW¼.

The areas described above aggregate 200 acres.

M. M. GORECKI,
Chief, Lands Adjudication Unit,
Land Office, Portland.

[F.R. Doc. 61–10421; Filed, Nov. 1, 1961; 8:45 a.m.]

[W–0150196]

WYOMING

Notice of Proposed Withdrawal and Reservation of Lands

OCTOBER 26, 1961.

The Forest Service, U.S. Department of Agriculture, has filed an application, serial number Wyoming 0150196, for withdrawal of the lands described below from location and entry under the general mining laws of the United States.

The applicant desires the lands for public recreation and administrative uses.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the State Director of the Bureau of Land Management, Department of the Interior, P.O. Box 929, Cheyenne, Wyoming.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, WYOMING

SHOSHONE NATIONAL FOREST

Wayne's Creek Sagebrush Watershed Project

T. 43 N., R. 105 W.,
Sec. 10: Lot 1, SE¼NE¼, NE¼SE¼;
Sec. 11: Lot 1, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼.

Sunlight Ranger Station Administrative Site

T. 55 N., R. 105 W.,
Sec. 19, portions of Lots 3 and 4, and W½SE¼SW¼ more particularly described as Tract B; beginning at Corner #1, which is on the section line common to Sec. 19, T. 55 N., R. 105 W., and Sec. 24, T. 55 N., R. 106 W., 6th P.M., from which the quarter corner common to Sec. 19, T. 55 N., R. 105 W., and Sec. 24, T. 55 N., R. 106 W., 6th P.M., bears North 1,632.7 feet, thence from said corner #1 S 87°45' E 825.5 feet to Corner #2; thence S 69°45' E 1,749 feet to Corner #3; thence N 52° E 594 feet to Corner #4; thence N 24°25' W 1,603.3 feet to Corner #5 which is common to Corner #14 of HES #244; thence N 78°55' W 2,314 feet to Corner #6 which is common to Corner #1 of HES # 244 and the common quarter corner of Sec. 19, T. 55 N., R. 105 W., and Sec. 24, T. 55 N., R. 106 W.; thence South 1,632.7 feet along section line to point of beginning.

T. 55 N., R. 106 W.
Sec. 24, portions of SE¼NE¼, N½SE¼, SE¼SE¼; more particularly described as Tract A; beginning at Corner No. 1, which is on the section line common to Sec. 19, T. 55 N., R. 105 W., and Sec. 24, T. 55 N., R. 106 W., 6th P.M., from which the quarter corner common to Sec. 19, T. 55 N., R. 105 W., and Sec. 24, T. 55 N., R. 106 W., 6th P.M., bears North 1,632.7 feet; Thence from said Corner No. 1 North 1,632.7 feet to Corner No. 2 which is common to Corner No. 1 of HES No. 244 and the common quarter corner of Sec. 19, T. 55 N., R. 105 W., and Sec. 24, T. 55 N., R. 106 W.; thence N 0°02' W 490.5 feet along section line to Corner No. 3; thence S 84°37' W 271 feet to Corner No. 4; thence S 40°43' W 1,831.2 feet to Corner No. 5 which is common to Corner No. 1 of HES No. 53; thence S 53°31' E 659.3 feet to Corner No. 6 which is common to Corner No. 2 of HES No. 53; thence S 62°03' E 647.5 feet to Corner No. 7 which is common to Corner No. 3 of HES No. 53; thence S 87°45' E 362.5 feet to point of beginning.

Middle Fork Guard Station Administrative Site

T. 32 N., R. 101 W.,
Sec. 24: W½SW¼NE¼, SE¼NW¼, S½SW¼NW¼, NW¼SW¼, N½NE¼SW¼, SW¼NE¼SW¼, NW¼NW¼SE¼.

Louis Lake Guard Station Administrative Site

T. 30 N., R. 101 W.,
Sec. 12: Lot 2.

Dickinson Park Guard Station Adminstrative Site

T. 33 N., R. 102 W.,
Sec. 5: SE¼SE¼.

Louis Beach Campground

T. 30 N., R. 101 W.,
Sec. 1: Lots 6, 7, 10.

Popo Agie Campground

T. 30 N., R. 101 W.,
Sec. 1: Lot 4.

Fiddlers Lake Campground

T. 31 N., R. 101 W.,
Sec. 27: SE¼NE¼, SE¼SW¼NE¼, E½NW¼SE¼, SW¼NE¼SE¼.

Sinks Canyon Campground

T. 32 N., R. 100 W.,
Sec. 19: Lot 1.

Brooks Lake Campground

T. 44 N., R. 110 W., (unsurveyed)
Lands which when surveyed will probably be:
Sec. 25: S½NE¼NW¼, N½SE¼NW¼.

Beartooth Lake Campground

T. 57 N., R. 105 W., (unsurveyed)
Lands which when surveyed will probably be:
Sec. 6: E½SW¼SE¼, SE¼SE¼.

Kinnikinick Campground

T. 55 N., R. 106 W.,
Sec. 34: E½SE¼SW¼, W½SW¼SE¼.

Painted Rock Campground

T. 55 N., R. 106 W.,
Sec. 26: SE¼NE¼SW¼, SW¼NW¼SE¼.

MEDICINE BOW NATIONAL FOREST

Platte River Recreation Area

T. 13 N., R. 80 W.,
Sec. 6: Lots 2, 3, NE¼SE¼NW¼, S½SE¼NW¼.

T. 14 N., R. 80 W.,
Sec. 30: Lot 4, S½SE¼SW¼, NE¼SE¼SW¼, E½NE¼SW¼, W½NW¼SE¼;
Sec. 31: SE¼SW¼SE¼, N½SE¼SE¼.
T. 14 N., R. 81 W.
Sec. 25: SW¼SW¼, SW¼SE¼SW¼, S½SE¼SE¼.
Sec. 26: NW¼SW¼, N½NE¼SW¼, NE¼SW¼SE¼, N½SE¼SE¼.
Sec. 36: N½NE¼NE¼, NE¼NW¼NE¼, S½NW¼NE¼, SW¼SW¼NE¼, S½NE¼, NW¼, NW¼NE¼NW¼, E½NW¼NW¼, NE¼SW¼NW¼, SE¼NW¼, E½NE¼SW¼, NW¼SE¼, S½NE¼SE¼, SE¼SE¼.

LaBonte Canyon Recreation Area

T. 28 N., R. 73 W.,
Sec. 1: SE¼SE¼SW¼, S½SW¼SE¼.
Sec. 8: W½NW¼SW¼, N½SW¼SW¼, SE¼SW¼SW¼, S½SE¼SW¼, S½S½SE¼.
Sec. 9: SE¼SW¼SW¼, S½SE¼SW¼, SE¼NW¼SE¼, W½SW¼SE¼, NE¼SW¼SE¼, S½NE¼SE¼, N½SE¼SE¼.
Sec. 10: E½SE¼NE¼, SW¼SE¼NE¼, S½SW¼NE¼, SE¼SE¼NW¼, NE¼NE¼SW¼, W½NE¼SW¼, E½NW¼SW¼, SW¼NW¼SW¼.
Sec. 11: E½NE¼NE¼, SW¼NE¼NE¼, S½NW¼NE¼, S½NE¼NW¼, N½SW¼NW¼, N½SE¼NW¼.
Sec. 12: N½NE¼NW¼, N½NW¼NW¼, SW¼NW¼NW¼.
Sec. 16: N½NW¼NW¼.
Sec. 17: N½NW¼NE¼, NE¼NW¼, SE¼NW¼NW¼, N½SW¼NW¼, SW¼SW¼NW¼.
Sec. 18: Lots 3, 4, E½SE¼NE¼, SW¼SE¼NE¼, S½SW¼NE¼, NE¼SW¼, N½NW¼SE¼.
T. 28 N., R. 74 W.,
Sec. 13: S½SE¼NW¼, N½NE¼SW¼, SE¼NE¼SW¼, S½NW¼SE¼, N½SW¼SE¼, S½NE¼SE¼, NW¼SE¼SE¼.

Total area 2,717.98 acres, more or less.

THOMAS H. FLOYD, Jr.,
Land Office Manager.

[F.R. Doc. 61-10422; Filed, Nov. 1, 1961; 8:45 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 27-35]

LONG ISLAND NUCLEAR SERVICE CORP.

Notice of Proposed Issuance of Byproduct and Source Material License

Please take notice that Long Island Nuclear Service Corporation, 35 New Mill Road, Smithtown, Long Island, New York has applied for a license to receive and store solid byproduct and source material waste only at their facility located on Lakeland Avenue at Wilson Street, Bohemia, Town of Islip, Suffolk County, Long Island, New York, and to transfer said material to the AEC designated sites at the National Reactor Testing Station, Idaho Falls, Idaho and Oak Ridge National Laboratory, Oak Ridge, Tennessee for land burial. Under the requested license Long Island Nuclear Service Corporation would not possess more than 100 curies of any byproduct material having Atomic Numbers between 3 and 83, 1,000 curies of Hydrogen 3 and 1,000 pounds of source material at any one time.

The AEC has reviewed the application and proposes to grant the license subject to appropriate limitations, unless within fifteen (15) days after filing of this notice with the Federal Register Division, a petition to intervene and a request for a formal hearing is filed with the Commission in the manner prescribed in Title 10, Code of Federal Regulations, Chapter 1, Part 2, "Rules of Practice."

For further details see (1) the application submitted by the Long Island Nuclear Service Corporation and amendment thereto and (2) a memorandum prepared by the Division of Licensing and Regulation summarizing the considerations evaluated prior to the proposed isuance of the license, both on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of (2) above may be obtained at the Commission's Public Document Room or by request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., October 27, 1961.

For the Atomic Energy Commission.

R. LOWENSTEIN,
Director,
Licensing and Regulation.

[F.R. Doc. 61-10417; Filed, Nov. 1, 1961; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

GEORGE R. KIRCHNER COMMISSION SALES CO. ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the stockyards named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said act, and are, therefore, no longer subject to the provisions of the act.

Name, Location of Stockyard, and Date of Posting

George R. Kirchner Commission Sales Co., Morgan Hill, Calif., April 20, 1961.
Trev. Moore Sales Yard, Paramount (Hynes), Calif., January 6, 1947.
Gulf Coop. Marketing Assn., Inc., Trenton, Fla., July 8, 1960.
Greenville Livestock Auction, Greenville, Ill., May 18, 1961.
Laurel Burns Sale Barn, Brownsburg, Ind., June 10, 1959.
Decatur Sale Barn, Decatur, Ind., April 27, 1959.
Dixon Bros. Livestock Sales, Dexter, Mich., May 11, 1959.
Dixon Bros. Livestock Sales, Jackson, Mich., May 16, 1959.
Sparta Livestock Market, Sparta, Tenn., June 6, 1959.
Ned Parrish Livestock Auction, Clarksville, Tex., March 3, 1959.
Palestine Livestock Auction, Palestine, Tex., March 24, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule since it is found that the giving of such notice would prevent the due and timely administration of the Packers and Stockyards Act and would, therefore, be impracticable and contrary to the public interest. There is no legal warrant or justification for not deposting promptly a stockyard which is no longer within the definition of that term contained in said act.

The foregoing is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective upon publication in the FEDERAL REGISTER.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 30th day of October 1961.

H. L. JONES,
Chief, Rates and Registrations Branch, Packers and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 61-10452; Filed, Nov. 1, 1961; 8:50 a.m.]

O'NEILL LIVESTOCK AUCTION ET AL.

Proposed Posting of Stockyards

The Chief of the Rates and Registrations Branch, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the act.

O'Neill Livestock Auction, Eldora, Iowa.
Oskaloosa Livestock Auction, Oskaloosa, Iowa.
Ottawa Livestock Commission Co., Ottawa, Kans.
S. & J. Livestock Commission Co., Inc., Norton, Kans.
Walnut Sales Co., Walnut, Miss.
Clark County Sale Co., Kahoka, Mo.
Dillon Livestock Auction Co., Dillon, Mont.
Farmers Livestock Market, Plymouth, N.C.
Valley Livestock Auction Market, Hood River, Oreg.
Lincoln County Live Stock Market, Fayetteville, Tenn.
Arlington Livestock Commission Co., Inc., Arlington, Tex.
Junction Stockyards, Junction, Tex.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Chief, Rates and Registrations Branch, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 30th day of October 1961.

H. L. JONES,
Chief, Rates and Registrations Branch, Packers and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 61-10453; Filed, Nov. 1, 1961; 8:50 a.m.]

PELHAM STOCKYARDS, INC., ET AL.

Notice of Changes in Names of Posted Stockyards

It has been ascertained, and notice is hereby given, that the names of the livestock markets referred to herein, which were posted on the respective dates specified below as being subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), have been changed as indicated below.

Original Name of Stockyard, Location, and Date of Posting	*Current Name of Stockyard and Date of Change in Name*
GEORGIA	
Pelham Stockyards, Inc., Pelham, May 13, 1959	Pelham Livestock Co., March 1, 1961.
IDAHO	
Coeur d'Alene Livestock Commission Yards, Coeur d'Alene, October 2, 1959.	Coeur d'Alene Livestock Yards, June 23, 1961.
Idaho Falls Livestock Commission Co., Idaho Falls, August 10, 1937.	Idaho Livestock Auction, May 15, 1961.
IOWA	
Farmers Sales Co., Sumner, May 22, 1959	Farmers Sales Co., July 28, 1961.
MICHIGAN	
Hart Livestock Sales, Hart, May 14, 1959	Hart-Scottville Livestock Sales, Inc., August 1, 1961.
Scottville Livestock Sales, Scottville, May 14, 1959.	Hart-Scottville Livestock, Sales, Inc., August 1, 1961.
MINNESOTA	
Belgrade Community Sale, Belgrade, December 4, 1959.	Belgrade Livestock Auction Market, August 15, 1961.
MISSISSIPPI	
Southwest County Stockyards, Port Gibson, February 16, 1959.	Claiborne County Stockyards, March 8, 1961.
MONTANA	
Great Falls Stockyards Co., Great Falls, November 16, 1936.	Great Falls Livestock Market Center, July 1, 1961.
NEBRASKA	
Sargent Livestock Commission Co., Sargent, November 4, 1958.	Sargent Livestock Commission Co., Inc., August 7, 1961.
NEW MEXICO	
New Mexico Livestock, Inc., Artesia, November 22, 1960.	Artesia Livestock Auction, March 25, 1961.
Roswell Livestock Commission Co., Roswell February 14, 1957.	Roswell Livestock Commission Co., Inc., March 24, 1961.
OKLAHOMA	
Tillman County Livestock Sale, Frederick, March 19, 1951.	Frederick Stockyards, April 18, 1961.
TEXAS	
Cuero Livestock Commission Company, Cuero, May 3, 1957.	Cuero Livestock Commission, Inc., July 1, 1960.
Marshall-Longview Livestock Auction, Inc., Marshall, March 9, 1959.	Marshall Livestock Commission Co., March 22, 1961.
WYOMING	
Worland Livestock Commission Co., Worland, June 28, 1950.	Worland Livestock Auction, July 17, 1961.

Correction. On September 26, 1961, there appeared in the FEDERAL REGISTER (26 F.R. 9055) a notice of changes in names of posted stockyards. In the second column of such notice the heading "Current Name of Stockyard and Date of Posting" should read "Current Name of Stockyard and Date of Change in Name."

Done at Washington, D.C., this 30th day of October 1961.

H. L. JONES,
Chief, Rates and Registrations Branch Packers and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 61-10454; Filed, Nov. 1, 1961; 8:51 a.m.]

WALKER COUNTY LIVESTOCK ET AL.

Proposed Posting of Stockyards

The Chief of the Rates and Registrations Branch, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the act.

Walker County Livestock, Jasper, Ala.
Greenville Livestock Auction Co., Greenville, Ill.
Hampton Auction, Inc., Hampton, Iowa.
Faribault Livestock Sales Barn, Faribault, Minn.
Kahoka Sale Co., Kahoka, Mo.
Eustis Livestock Commission Co., Eustis, Nebr.
Schnell Livestock Market, Inc., Lemmon, S. Dak.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Chief, Rates and Registrations Branch, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 30th day of October 1961.

H. L. JONES,
Chief, Rates and Registrations Branch, Packers and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 61-10455; Filed, Nov. 1, 1961; 8:51 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 7382]

REOPENED FORT WORTH INVESTIGATION

Notice of Hearing

In the matter of the Reopened Fort Worth Investigation in relation to Fort Worth-New York and Fort Worth-Washington service.

Notice is hereby given pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on November 28, 1961, at 10:00 a.m. (local time) in the Hereford Room of the Hotel Texas, Fort Worth, Texas, before Examiner Leslie G. Donahue.

For further details on the scope and the issues in this proceeding, parties and other interested persons are referred to the Board's Second Supplemental Opinion and Order E-16673, adopted the 14th day of April 1961, the report of prehearing conference served July 28, 1961, and all other orders and notices heretofore issued by the Civil Aeronautics Board in this proceeding.

Dated at Washington, D.C., October 27, 1961.

[SEAL] LESLIE G. DONAHUE,
Hearing Examiner.

[F.R. Doc. 61-10459; Filed, Nov. 1, 1961; 8:51 a.m.]

[Docket No. 12929; Order No. E-17641]

PACIFIC AIR LINES, INC.

Order Denying Application for Authority To Serve Red Bluff, California, Through Redding Airport; Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of October 1961.

In the matter of an airport notice filed by Pacific Air Lines, Inc., Docket 12929, pursuant to § 202.3 of the Economic Regulations.

On May 4, 1960, Pacific Air Lines, Inc. (Pacific) filed with the Board a notice of its intent to regularly serve Red Bluff, California, through the Redding airport at Redding, California. By Order E-15317, dated June 2, 1960, the Board ordered that Redding airport should not be used to serve Red Bluff unless and until the Board found upon application of Pacific that the public interest would not be adversely affected thereby. By its present application, Pacific seeks approval by the Board of its proposed use of Redding airport to serve Red Bluff.

Red Bluff is an intermediate point on segment 2 of Pacific's route 76.[1] By the terms of its certificate, the carrier is required to schedule two daily round trips to each intermediate point before service to a point may be omitted. Following Order E-15317, Pacific filed an application for a change in service pattern which would authorize it to overfly Red Bluff after one daily round trip. By Order E-15712, August 30, 1960, the Board authorized the overflight of Red Bluff after the point was scheduled to be served on one daily round trip to and from San Francisco, thereby enabling Pacific to increase the available capacity of segment 2 service by using Martin 404 aircraft, for which the Red Bluff airport is inadequate, on one of the two round trips which the carrier previously had been operating with DC-3 equipment.

In support of its application, Pacific alleges that the Red Bluff airport is inadequate for Martin 404 and F-27 aircraft operations, although all other airports served on the same flights which serve Red Bluff are fully adequate for Martin 404 operations; that the pattern of service of two daily round trips with the larger Martin 404 and F-27 aircraft, and one daily DC-3 round trip, authorized under Order E-15712, did not attain the hoped for traffic results; that in order to increase load factors and economize, Pacific was compelled to eliminate one of the two larger aircraft schedules over this segment in May 1961, since it was necessary to retain the DC-3 schedule to serve Red Bluff; that the discontinuance of one of the large aircraft schedules has resulted in complaints as to the lack of sufficient capacity as well as with respect to the lack of air conditioning and pressurization on the DC-3 schedule; and that the use of Martin 404 pressurized equipment as a substitute for the remaining DC-3 schedule will provide a more acceptable pattern of service to the other communities on the segment, stimulate additional traffic without additional plane miles, and meet some of the complaints as to service made by Redding and other communities on this segment.

The carrier further states that the Redding airport is only 24 miles north of the center of Red Bluff, requiring only about 30 minutes of driving time at the posted speed limits; that limousine service would be provided for mail, express and freight by a contractor; that many passengers from Red Bluff now use the Pacific service through the Redding airport or through the Chico airport, 33 miles south of Red Bluff; that Red Bluff has not met "use it or lose it" standards, although it has been served by Pacific since 1947; that in 1960 Red Bluff originated an average of 2.8 passengers per day, whereas Redding and Chico originated 26.7 and 16.3 passengers per day, respectively; that use of the larger pressurized equipment proposed will benefit over 90 per cent of the total traffic using the airports; that the use of DC-3 equipment to serve Red Bluff results in a less convenient service to points which generated over 132,000 passengers in 1960; and that the use of the Redding airport to serve Red Bluff will eliminate $23,000 of expense incurred in serving Red Bluff with a DC-3 round trip daily and will eliminate the need for the expenditure of substantial funds by local, State and Federal governments for extension of the runway at Red Bluff by the 1,500 feet which would be required for service with Martin 404 aircraft.

Answers were filed on behalf of the Chico Chamber of Commerce and the Redding Chamber of Commerce and the City of Redding urging that the carrier's application be granted. The City of Red Bluff filed an answer opposing the application. The city alleges that Red Bluff generates more than sufficient traffic to warrant proper service by Pacific; that the greater number of persons traveling from Red Bluff to San Francisco or Sacramento use the Redding airport since the service provided at Red Bluff did not permit one day round trips to these points; and that such Red Bluff passengers must drive to Redding at their own expense, pay additional fare, and add one hour to their round trip time. It further alleges that many Red Bluff passengers using the Redding airport purchased their tickets at Red Bluff, but were not credited as Red Bluff passengers.

[1] Segment 2 extends from the coterminals of San Francisco and Oakland, California, via nine intermediate points to the terminals of Medford and Portland, Oregon.

After careful consideration of all of the pleadings of the parties, and of the service needs of Red Bluff as compared to the service needs of other points on Pacific's segment 2, we tentatively find and conclude that service to Red Bluff through the Redding airport would be in the public interest.

Service through the Red Bluff airport in 1960 benefited only approximately 2,000 passengers generated at that point, but the substitution of a larger pressurized aircraft for the DC–3 aircraft, which must be used to serve Red Bluff, would provide better service for a greater number of passengers generated at the other points served by these flights. The required 30 minutes of driving time between Red Bluff and the Redding airport, and the approximately 10 percent increase in fare required, would not be unduly burdensome on Red Bluff since Red Bluff passengers would benefit by the improved service made available at the Redding airport. Red Bluff in its answer suggests that Pacific's application be denied and that the carrier be authorized to overfly Red Bluff until its airport is made adequate for Martin 404 or F–27 aircraft. No estimate of a completion date for the extension of the runway at Red Bluff is given at that city.[2] [3]

Pacific's authority to serve Red Bluff under the terms of its certificate expires December 29, 1961. In the absence of an application from Pacific for a renewal of its authority to serve Red Bluff, service will terminate on that date, and the city will no longer be designated as an airline point. It is estimated that Pacific received approximately $29,000 in passenger revenues in 1960 at Red Bluff and that most of this revenue would be retained if service is provided through the Redding airport. The carrier estimates that service to Red Bluff through the Redding airport would eliminate $23,000 of expense incurred in serving the Red Bluff airport on one DC–3 round trip daily. Under the class rate formula, the elimination of the DC–3 round trip serving Red Bluff and the substitution therefor of a Martin 404 round trip, which would eliminate one station and six miles of circuity on each round trip, would result in an increase in Pacific subsidy payments of approximately $92,000. This estimate is based on experienced operating data filed with the Board covering the first nine months of 1961 plus Pacific's forecast submitted for the last three months of the year.

On the basis of all these considerations, it is tentatively concluded that the public interest requires that Red Bluff should be served through the Redding airport. It is clear, however, that there are involved herein precise issues as to the needs of the Red Bluff/Redding area which should be resolved in a proceeding under section 401(g) of the Act, rather than on an informal basis. Accordingly, we will deny Pacific's application in Docket 12929 for authority to serve Red Bluff through the Redding airport, and conclude that an order should be entered directing Pacific to show cause why its authority to serve Red Bluff should not be renewed to provide for Red Bluff service as a dual point with Redding. In order to permit the conclusion of the proceeding prior to December 29, 1961, the date on which Pacific's authority to serve Red Bluff expires, petitions for reconsideration of this order will not be entertained, and an early date will be set for the filing of objections to the tentative findings and conclusions set forth herein.

Accordingly, it is ordered:

1. That all interested persons be and they hereby are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions set forth herein, and amending the certificate of public convenience and necessity of Pacific for route 76 so as to authorize service at Red Bluff and Redding, California, as a dual point to be served through the Redding airport;

2. That any interested persons having an objection to the issuance of an order, making final the proposed findings, conclusions and certificate amendment set forth herein, shall, within 15 days from the service date, file with the Board, and serve upon all persons hereafter made parties to this proceeding, a statement of objections; [4]

3. That in the event there are timely filed objections, this proceeding, identified as the Pacific Air Lines Service to Red Bluff and Redding Case, Docket 12929, shall be set for hearing, at the earliest practicable time, before an Examiner of the Board;

4. That, in the event no objections are filed, all further procedural steps will be deemed to have been waived and the case will be submitted to the Board for final action;

5. That the application of Pacific in Docket 12929 be and it hereby is denied;

6. That copies of this order shall be served upon Pacific Air Lines, Inc., the City of Redding, the City of Chico, and the City of Red Bluff, all hereby made parties to this proceeding in Docket 12929; and

7. That this order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 61–10460; Filed, Nov. 1, 1961; 8:52 a.m.]

[2] We are informally advised by the Federal Aviation Agency that no Federal funds are presently allocated to Red Bluff for development purposes.

[3] Pertinent traffic and passenger load data are set forth in Appendices A and B filed as part of the original document.

[4] The Board will not separately entertain petitions seeking reconsideration of this order. All requests for relief from, or modifications of, this order shall be submitted with such objections as may be made to the issuance of an order making final the proposed findings and conclusions and certificate amendment set forth herein.

[Docket 9767]

SERVICE TO SHEBOYGAN COUNTY, WISCONSIN

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled proceeding is assigned to be held on November 15, 1961, at 10 a.m., e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., October 30, 1961.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 61–10461; Filed, Nov. 1, 1961; 8:52 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 14154; FCC 61–1252]

AMERICAN TELEPHONE AND TELEGRAPH CO.

Order Regarding Investigation

In the matter of American Telephone and Telegraph Company, Docket No. 14154; regulations and charges for developmental line switched service.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of October 1961;

The Commission having under consideration its order adopted October 4, 1961, herein, which suspended the following tariff schedules: Original Pages 3A, 4A, 4B, 4C, 5A, and 22 through 79, 1st Revised Title Page, 1st Revised Pages 2 through 15, and 17 through 21, and 2d Revised Page 16 of American Telephone and Telegraph Company (A.T. & T.) Tariff F.C.C. No. 252; 2d Revised Title Page, 13th Revised Page 5, 4th Revised Pages 4, 6, and 14, and 7th Revised Page 7 of A.T. & T. Tariff F.C.C. No. 133; and 4th Revised Page 4, and 3d Revised Page 6 of A.T. & T. Tariff F.C.C. No. 245; and

It appearing that through inadvertence said order of October 4, 1961 failed to extend the investigation ordered herein on June 7, 1961 to include the revisions of A.T. & T. Tariffs F.C.C. Nos. 133 and 245;

It is ordered, That the first ordering clause of the order adopted herein on June 7, 1961, is amended to read as follows:

It is ordered, That pursuant to the provisions of sections 201, 202, 204, 205, and 403 of the Communications Act of 1934, as amended, that investigation is hereby instituted upon the Commission's own motion into the lawfulness of A.T. & T. Tariff F.C.C. No. 252; 2d Revised Title Page, 13th Revised Page 5, 4th Revised Pages 4, 6, and 14, and 7th Revised Page 7 of A.T. & T. Tariff F.C.C. No. 133; and 4th Revised Page 4, and 3d Revised

Page 6 of A.T. & T. Tariff F.C.C. No. 245, including amendments thereto and successive issues thereof;.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10472; Filed, Nov. 1, 1961; 8:53 a.m.]

[Docket No. 14251; FCC 61-1256]

AMERICAN TELEPHONE AND TELEGRAPH CO.

Memorandum Opinion and Order

In the matter of American Telephone and Telegraph Company, Docket No. 14251; regulations and charges for TELPAK services and channels.

1. The Commission has before it the record to date in the above-entitled proceedings and (A) Tariff F.C.C. No. 250 of the American Telephone and Telegraph Company (A.T. & T.) applicable to TELPAK services and channels including the revised schedules of that tariff placed under suspension by order of September 7, 1961, such schedules hereinafter referred to as the "Revisions"; (B) A "Motion to Change and Separate Issues and to Expedite Proceedings" filed by Motorola, Inc. (Motorola) on September 29, 1961, requesting that, in the interest of expediting a determination, the questions as to whether the Revisions are unlawfully discriminatory or preferential within the meaning of section 202(a) of the Communications Act be resolved separately from, and prior to the resolution of the other questions at issue in this proceeding; (C) Oppositions to the Motorola request filed by A.T. & T. on October 10, 1961, and jointly by the NAM Committee on Manufacturers Radio Use and the American Trucking Associations (NAM-ATA) on October 12, 1961; and (D) A reply to the above-mentioned oppositions filed by Motorola on October 20, 1961, and comments filed by The Western Union Telegraph Company on October 6, 1961, urging that Motorola's motion be granted if, in the Commission's judgement, such a separation of the issues would not delay the final determination relative to the entire TELPAK concept.

2. In support of its request for separation of the issues, Motorola argues that unless the questions of the lawfulness of the Revisions are resolved as soon as possible, preferably within the period of suspension, the customers of TELPAK might suffer irreparable injury, the development of the private microwave communications industry would be precluded, and the establishment of a monopoly in the manufacture and sale of microwave communications equipment and in the furnishing of communications services would be fostered in the Bell System. Motorola suggests that the presiding examiner be directed to receive the evidence necessary for a determination as to whether the furnishing of TELPAK services and channels under the revised schedules is in any material respect different from the furnishing of services and channels under A.T. & T. Tariff F.C.C. Nos. 135, 140, 208, 220, 231 and 237 (hereinafter referred to as the "other private line services"). Motorola further suggests that after receiving such evidence as may be adduced, the presiding examiner should certify that portion of the record to the Commission without preparing either an initial or recommended decision at which time, it is urged, the Commission can determine the lawfulness of the revisions under section 202(a) of the Act as a matter of law without further evidentiary proceedings. Under this concept, the Commission would reach its determination under the assumptions, arguendo, that the rates under the Revisions are compensatory and competively necessary.

3. In opposing the Motorola action, A.T. & T. and NAM-ATA question Motorola's standing to seek a separation of the issues especially since it does so on the grounds that the TELPAK customers, some of whom are intervenors in this proceeding, would suffer injury. Motorola's standing to speak for the private microwave manufacturing industry is also questioned. There is no merit to this argument inasmuch as Motorola has been granted the privileges of full intervention which alone gives it sufficient standing. A.T. & T. and NAM-ATA also assert that the issues are so intertwined as to be inseparable and that even if separation is possible in this case it can only result in delay rather than expedition as a consequence of the inevitable duplication of the evidentiary and decisional processes.

4. It would appear that if separation of a limited number of issues for early determination is possible, and if such a separation will not unduly delay the determination of the remainder of the questions at issue, such a separation would serve the public interest. An early resolution of the problems of discrimination and preference relating to the Revisions is particularly desirable in view of the concern we expressed in the order of September 7, 1961, as the basis for suspending those Revisions; viz.:

> * * * if the August 3 revisions of Tariff F.C.C. No. 250 are permitted to become effective as scheduled, substantial injury to the rights and interests of the public may result if the tariff schedules are determined to be unjust, unreasonable or otherwise unlawful.

The problem then becomes whether separation is possible and whether separation will retard unduly the resolution of the other issues.

5. Our understanding of Motorola's contention is that, assuming the TELPAK rates under the Revisions are compensatory and competitively necessary, they are nevertheless unlawful if (1) the services are indistinguishable from other private line services; and (2) there are no material cost differences associated with furnishing a given number of channels to one customer as opposed to furnishing the same number of channels to as many customers. If Motorola is correct, the matter of evidence becomes comparatively simple. Question number 1 is properly resolved by reference to the tariffs on file with the Commission. Since we do not understand that A.T. & T. contends to the contrary of question number 2, brief testimony, or perhaps a stipulation, would establish the basic facts for the record. It then becomes a question of law as to whether under such circumstances the Commission must determine that the TELPAK rates under the Revisions are ipso facto, unlawful.

6. If Motorola is correct in its contention, it would seem futile to proceed with the more voluminous evidentiary procedures required to demonstrate that the rates are necessary to meet competition and are compensatory. Moreover, it would appear that more expeditious procedures than those suggested by Motorola are desirable in order to dispose of this threshold question at the earliest possible time.

7. *Accordingly, it is ordered,* This 25th day of October 1961, that on November 13, 1961 at 10 a.m. at its offices in Washington, D.C., the Commission en banc will receive evidence as to:

(1) Whether services under the suspended revised tariff schedules are distinguishable in any material respects from services offered under Tariff F.C.C. Nos. 135, 140, 208, 220, 231, and 237; and

(2) Whether there are any material cost differences associated with furnishing a given number of channels to one customer as opposed to furnishing the same number of channels to as many customers;

and that immediately subsequent to the receipt of such evidence the Commission will have oral argument as to whether, in the light of such evidence, the TELPAK rates under the Revisions as above described are unlawfully discriminatory or preferential under the provisions of section 202(a) of the Communications Act of 1934, as amended.

8. *It is further ordered,* That the parties may file briefs on or before November 9, 1961 and that no initial decision on these matters will be issued.

9. *It is further ordered,* That, for the reasons given above, the Motorola motion to change and separate issues and to expedite proceedings is granted to the extent indicated herein and in all other respects denied.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10473; Filed, Nov. 1, 1961; 8:53 a.m.]

[Docket No. 14251; FCC 61M-1702]

AMERICAN TELEPHONE AND TELEGRAPH CO.

Order After Prehearing Conference

In the matter of American Telephone and Telegraph Company, Docket No. 14251; regulations and charges for TELPAK services and channels.

A prehearing conference having been held in the above-entitled proceeding on October 26, 1961;

It is ordered, This 26th day of October, 1961 that:

(1) The hearing presently scheduled to commence on November 28, 1961 is hereby rescheduled so as to commence on Monday, December 11, 1961, at 2 p.m. at the offices of the Commission, Washington, D.C.;

(2) American Telephone and Telegraph Company will deliver a copy of its written direct case to counsel for each of the parties, and to the Hearing Examiner, not later than the close of business on Monday, December 4, 1961;

(3) The rules of procedure proposed by the Hearing Examiner, as modified and clarified as the result of discussions during the prehearing conference, are hereby incorporated by reference to the prehearing transcript with full force and effect as if set forth verbatim herein and are hereby adopted as the ground rules to govern the future conduct of the hearing;

It is ordered further, That the deadline dates established herein, as well as the procedures adopted, shall be considered as firm and will not be altered except on the basis of a timely filed motion predicated on a strong showing of good cause.

Released: October 27, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10474; Filed, Nov. 1, 1961; 8:53 a.m.]

[Docket Nos. 14336-14340; FCC 61-1247]

ANTENNAVISION SERVICE CO., INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Antennavision Service Company, Inc.: For renewal of the license for station KPH82, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Wildcat Peak, Arizona, Docket No. 14336, File No. 657-C1-R-61; for renewal of the license for station KPH83, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Jack's Peak, Arizona, Docket No. 14337, File No. 658-C1-R-61; for renewal of the license for station KOU61, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Hutch Mountain, Arizona, Docket No. 14338, File No. 2326-C1-R-61; for a modification of license to cover a construction permit for additional facilities for station KOU61 in the Domestic Public Point-to-Point Microwave Radio Service at Hutch Mountain, Arizona, Docket No. 14339, File No. 2525-G1-ML-61; for a construction permit to increase power and change antenna at existing licensed station KOU61 in the Domestic Public Point-to-Point Microwave Radio Service at Hutch Mountain, Arizona, Docket No. 14340, File No. 3699-C1-P-61.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled applications for renewal of the licenses for stations KPH82 and KPH83, facilities in the Domestic Public Point-to-Point Microwave Radio Service serving a community antenna television system in Page, Arizona; as well as the above-captioned application for renewal of license for station KOU61 serving community antenna television systems in Winslow and Holbrook, Arizona; and associated applications for modification of license to cover a construction permit for additional facilities for station KOU61 to serve a community antenna television system in Cottonwood, Arizona and for a construction permit to increase power and change antenna at station KOU61; and

It appearing that the only communication service provided by the applicant is to Antennavision, Inc. and Merrill CTV, Inc., the owners and operators of the community antenna television systems serving Page, Winslow and Holbrook, Arizona and Cottonwood, Arizona,[1] respectively, and that Mr. Bruce Merrill, the principal stockholder of the applicant corporation holds the principal stock interest in Antennavision, Inc. and also controls Merrill CTV, Inc.; and

It further appearing, that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that, during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself; and

It further appearing, that there is a question whether there is a need for the continued holding out of this particular common carrier communication service in light of the non-use of the facilities by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing, that the above-captioned applications for modification of license to cover a construction permit for additional facilities and for a construction permit to increase power and change antenna at station KOU61 are to serve existing customers with whom, as stated above, there exists an identity of ownership interest; and

It further appearing that Commission action on the above-mentioned applications is contingent upon renewal of the license for station KOU61; and

It further appearing that the Commission is unable to find that a grant of the applications would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, as it existed prior to modification and as modified, in view of the non-use of the facilities by public subscribers, i.e., persons or entities with whom the the licensee is not directly or indirectly affiliated.

(b) To determine the need for the holding out of the enhanced common carrier communication service proposed to be offered over the facilities of station KOU61, in view of the identity of ownership interest existing between applicant and its customers.

(c) To determine the facts with respect to the past business activities of the applicant relating to the operation of stations KOU61, KPH82 and KPH83 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(d) To determine the nature and extent of the interests existing among the applicant and Antennavision, Inc., and Merrill CTV, Inc., respectively.

(e) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

(f) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of all or any of the applications would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10475; Filed, Nov. 1, 1961; 8:53 a.m.]

[Docket No. 14348; FCC 61-1264]

ANTENNAVISION SERVICE CO., INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Antennavision Service Company, Inc., Docket No. 14348; File Nos. 4083/4084/4085/4086-C1-P-61; for construction permits to establish stations in the Point-to-Point Microwave Radio Service located respectively at Toro Peak, El Centro, 14 miles ESE of Holtville, and 8 miles SE of Ogilby, California.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of October 1961;

The Commission having under consideration the above-entitled applica-

[1] Applicant presently has on file an application for modification of license to cover a construction permit for additional facilities for station KOU61 and is currently providing, under service tests, pursuant to § 21.212 of our rules, microwave transmission service to Cottonwood, Arizona.

[2] Dissenting statement of Commissioner Cross filed as part of original document.

tions of Antennavision Service Company, Inc. (hereinafter called Antennavision) for construction permits to establish fixed (video) point-to-point microwave stations at Toro Peak, El Centro, 14 miles ESE of Holtville and 8 miles SE of Ogilby, California; and

It appearing that the only communication service to be provided over the proposed facilities is to Valley Telecasting Co., Inc. (hereinafter called Valley), a community antenna system serving El Centro, California and Yuma, Arizona, and television broadcast station KIVA, Yuma, Arizona; and

It further appearing that Bruce Merrill, the principal stockholder of Antennavision, also owns one hundred percent of the stock of Valley, and that television station KIVA is affiliated with Valley; and

It further appearing that there is a question whether there is a need for the holding out of this particular common carrier communication service in view of the apparent absence of any present or prospective request for such service from any public subscribers, i.e., persons or entities with whom Antennavision is not directly or indirectly affiliated; and

It further appearing that the Commission is unable to find that a grant of the applications would serve the public interest, convenience or necessity; and

It further appearing that, since determination of the issues hereinafter designated will involve facts common to the captioned applications as well as to certain related applications of Antennavision designated for hearing in Docket Nos. 14336, 14337, 14338, 14339, and 14340, a consolidated hearing on all such applications is desirable;

It is ordered, That, pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, a hearing be held herein, at the offices of the Commission in Washington, D.C., at a time and place to be hereafter specified, on the following issues:

(a) To determine the legal, financial and other relationships heretofore and presently existing between Bruce Merrill, Valley, station KIVA, and Antennavision, respectively.

(b) To determine the need for the holding out of this particular common carrier service in view of the apparent absence of any present or prospective request for such service from any public subscribers, i.e., persons or entities with whom Antennavision is not directly or indirectly affiliated.

(c) To determine, in light of the evidence adduced on the foregoing issues, whether a grant of the applications would serve the public interest, convenience or necessity.

It is further ordered, That the hearing on the issues specified above be consolidated with the hearing in Docket Nos. 14336, 14337, 14338, 14339 and 14340; and

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein; and

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with the provisions of § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10476; Filed, Nov. 1, 1961; 8:53 a.m.]

[Docket No. 14316; FCC 61-1239]

ARIZONA MICRO-WAVE SYSTEM CO.

Order Designating Application for Hearing on Stated Issues

In re application of Arizona Micro-Wave System Company, Mule Mountain, Arizona, Docket No. 14316, File No. 1592-C1-R-61; for renewal of the license for station KOU84, a facility in the Domestic Public Point-to-Point Microwave Radio Service.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled application for renewal of the license for station KOU84, a facility in the Domestic Public Point-to-Point Microwave Radio Service serving a community antenna television system in Douglas, Arizona; and

It appearing that the only communication service provided by the applicant is to Whitey's T.V. Cable Company, the owner and operator of the community antenna television system serving Douglas, Arizona and that an identity of ownership interest exists between the applicant and the community antenna television system served; and

It further appearing that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that, during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself; and

It further appearing that there is a question whether there is a need for the continued holding out of this particular common carrier communication service in light of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing that the Commission is unable to find that a grant of the application would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled application is designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, in view of the non-use of the facility by public subscribers, i.e., person or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the facts with respect to the past business activities of the applicant relating to the operation of station KOU84 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(c) To determine the nature and extent of the interest existing between applicant and the community antenna television system served by it.

(d) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

(e) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of the application would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10477; Filed, Nov. 1, 1961; 8:53 a.m.]

[Docket Nos. 14321-14329; FCC 61-1243]

BLACK HILLS VIDEO CORP.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Black Hills Video Corporation: For renewal of the license for station KAR42, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Fredericktown, Missouri, Docket No. 14321, File No. 223-C1-R-61; For a modification of license to cover a construction permit for additional facilities for station KAR42 in the Domestic Public Point-to-Point Microwave Radio Service at Fredericktown, Missouri, Docket No. 14322, File No. 361-C1-ML-61; For renewal of the license for station KKU98, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Davy, Texas, Docket No. 14323, File No. 338-C1-R-61; For renewal of the license for station KAP22, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Weld County, Colorado, Docket No. 14324, File No. 752-C1-R-61; For renewal of the license for station KAP23, a facility in the Domestic Public Point-to-Point

[1] Dissenting statement of Commissioner Cross filed as part of original document.

Microwave Radio Service at Mitchell, Nebraska, Docket No. 14325, File No. 753–C1–R–61; For renewal of the license for station KAP25, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Crawford, Nebraska, Docket No. 14326, File No. 754–C1–R–61; For renewal of the license for station KOY47, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Albin, Wyoming, Docket No. 14327, File No. 755–C1–R–61; For renewal of the license for station KAQ88, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Custer, South Dakota, Docket No. 14328, File No. 756–C1–R–61; For renewal of the license for station KKX74, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Muleshoe, Texas, Docket No. 14329, File No. 2697–C1–R–61.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled applications for renewal of the licenses for stations KAP22, KAP23, KAP25, KAQ88 and KOY47 (system No. 1), KKU98 (system No. 2) and KKX74 (system No. 3), in the Domestic Public Point-to-Point Microwave Radio Service serving community antenna television systems in Rapid City, South Dakota; Victoria, Texas; and Clovis, New Mexico, respectively, as well as the above-captioned applications for renewal and modification of license to cover a construction permit for additional facilities for station KAR42 (system No. 4), a facility in the above service serving a community antenna television system in Poplar Bluff and Dexter, Missouri; and

It appearing that the only communication service provided by the applicant over each system is to Rapid City Television Corporation, the owner and operator of the community antenna television system serving Rapid City, South Dakota (system 1) and Tele-Tenna Corporation of Texas, the owner and operator of the community antenna television system serving Victoria, Texas (system 2) (both of which are subsidiaries of Midwest Video Corporation), as well as to Midwest Video Corporation, the owner and operator of the community antenna television system serving Clovis, New Mexico (system 3) and Poplar Bluff and Dexter, Missouri (system 4),[1] and that each of the above-mentioned operators of community antenna television systems, other than those operated directly by Midwest Video Corporation, as well as the applicant, are all subsidiaries of Midwest Video Corporation; and

It further appearing that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that, during the preceding license period, at least 50 percent of the total hours of service rendered over its respective radio systems and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling, or controlled by, or under direct or indirect common control with itself; and

It further appearing that there is a question whether there is a need for the continued holding out of these particular common carrier communication services in light of the non-use of the facilities by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing that the above-captioned application for modification of license to cover a construction permit for additional facilities for station KAR42 is to serve Midwest Video Corporation, the parent corporation of the applicant; and

It further appearing that Commission action on the above-mentioned application is contingent upon renewal of the license for station KAR42; and

It further appearing that the Commission is unable to find that a grant of these applications would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding at the Commission's offices in Washington, D.C. on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of these particular respective common carrier communication services, as they existed prior to modification, and as modified, in view of the non-use of each of the respective four systems identified above by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the facts with respect to the past business activities of the applicant relating to the operation of stations KAP22, KAP23, KAP25, KAQ88, KOY47, KKU98, KKX74, and KAR42 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(c) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier as to each respective system, or whether, in light of such determinations, such holding out should be terminated.

(d) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of all or any of the applications would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61–10478; Filed, Nov. 1, 1961; 8:54 a.m.]

[1] Applicant presently has on file an application for modification of license to cover a construction permit for additional facilities for station KAR42 and is currently providing, under service tests, pursuant to § 21.212 of our rules, microwave transmission service over a fourth channel to Poplar Bluff and Dexter, Missouri.

[Docket Nos. 14341–14344; FCC 61–1248]

COLLIER ELECTRIC CO.

Memorandum Opinion and Order Designating Applications for Hearing on Stated Issues

In re Applications of Collier Electric Company: For renewal of the license for station KAQ79, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Fort Morgan, Colorado, Docket No. 14341, File No. 848–C1–R–61; for renewal of the license for station KAQ80, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Sterling, Colorado, Docket No. 14342, File No. 849–C1–R–61; for renewal of the license for station KAQ81, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Sidney, Nebraska, Docket No. 14343, File No. 2670–C1–R–61; for renewal of the license for station KAS41, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Bridgeport, Nebraska, Docket No. 14344, File No. 2710–C1–R–61.

1. The Commission has before it for consideration (a) the above-entitled applications (filed on January 4, 1961) of Collier Electric Company (hereinafter called Collier), for renewal of the licenses for stations KAQ79, KAQ80, KAQ81 and KAS41, facilities in the Domestic Public Point-to-Point Microwave Radio Service serving community antenna television systems in Sterling, Colorado, Sidney, Kimbal, Alliance and Gering, Nebraska, respectively; (b) a petition to deny such applications filed pursuant to section 309(d) of the Communications Act of 1934, as amended, on February 6, 1961 by Frontier Broadcasting Company (hereinafter called Frontier), licensee of television broadcast stations KSTF in Scottsbluff, Nebraska and KFBC-TV in Cheyenne, Wyoming; (c) an opposition to said petition, timely filed by Collier on February 20, 1961; and (d) a reply to the opposition filed by Frontier on March 2, 1961, which, in accordance with §§ 1.13 and 1.18 of the Commission's rules was not timely filed and, accordingly, has not been considered in our disposition of the subject protest.

THE RENEWAL APPLICATIONS

2. Collier has provided point-to-point microwave radio service to Sterling Community T.V. Company, Sidney Community T.V. Company, Kimball Community T.V. Company, Alliance Community T.V.

[2] Dissenting statement of Commissioner Cross filed as part of original document.

Company and Scotts Bluff County Community T.V. Company, the owners and operators of the CATVs in the respective cities mentioned in paragraph 1. In Exhibit No. 3, attached to its applications, Collier states that these respective CATVs are its only customers and are wholly owned by it. It, thus, appears that the only communication service provided by Collier has been to CATV customers in which it has a controlling interest and that Collier has been unable to show compliance with that portion of § 21.709 of our rules which requires that, during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself. It further appears that Collier has been in operation of the above stations for substantial periods of time (the licenses for stations KAQ79 and KAQ80 having been granted on October 15, 1957 and for stations KAQ81 and KAS41 on April 14, 1959 and May 18, 1959, respectively). Thus, there is a question whether there is a need for the continued holding out of this particular common carrier communication service in light of the non-use of the facilities by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated. Accordingly, the Commission is unable to find that a grant of the renewal applications would serve the public interest, convenience or necessity and would, on its own motion, pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, designate the subject applications for hearing upon issues (a), (b), (c), (d), and (e) as set forth hereinafter in this Memorandum Opinion and Order.

THE PREGRANT PROTEST

3. In support of its pregrant protest, Frontier alleges that it is a party in interest, within the meaning of section 309 (d)(1) of the Communications Act of 1934, as amended, for the following reasons: It operates television station KSTF in Scottsbluff, the only television station in that city. The city of Gering is adjacent to Scottsbluff and within the calculated city grade signal contour of station KSTF. A community of interest exists between Scottsbluff and Gering, Nebraska, and, therefore, station KSTF is identified by Frontier with Gering as well as Scottsbluff. The city of Alliance is within the calculated Grade B contour of station KSTF. Frontier alleges that it suffers economic injury from the activities of the CATV systems in Gering and Alliance in furnishing to their customers the programs of Denver, Colorado network affiliated television stations, as well as those of station KSTF, thereby duplicating the programs of KSTF, dividing and reducing its audience, reducing the sale value of its program time, and causing it loss of revenues.

4. Frontier alleges that Collier is not a common carrier. It bases that allegation on Exhibit No. 3, attached to the subject renewal applications, which indicates that Collier has neither provided microwave service to any customer not wholly owned by it, nor succeeded, during the past three and a half years, in acquiring non-affiliated subscribers to its service. Frontier further asserts that, judging from the widely varying rates that Collier was quoting to persons making inquiry about microwave relay service, it must be inferred that Collier has actively and successfully attempted to discourage the use of its service by prospective public subscribers and has, therefore, insured use of its microwave facilities for its own business purposes.

5. Frontier alleges that it is required to pay valuable consideration for the copyrighted works and other literary properties which it broadcasts over station KSTF, but that Collier transmits the programs of KSTF and others over its CATV systems in Gering and Alliance without obtaining the permission of Frontier or the other alleged owners. This action on Collier's part is viewed by Frontier as unfair competition to it, as well as unlawful taking of property. Frontier maintains that Collier transmits KSTF's programs despite the fact that it has forbidden it to do so.

6. Frontier alleges that Collier constructed station KAS41 prior to the grant by the Commission of a construction permit for such facilities and that, consequently, the Commission was forbidden by section 319(a) of our Act from issuing a license for that station. Frontier, thus, alleges that the Commission may not renew the license for station KAS41.[1]

7. Frontier further alleges that Collier has been lacking in candor in some of its representations to the Commission which, it maintains, establishes a prima facie case that Collier does not possess the requisite qualifications to receive a grant of its renewal applications.[2]

8. Upon the foregoing allegations, Frontier requests that all the above-entitled applications be designated for hearing on the following issues.

"(a) To determine whether Collier has been, is, or is likely in the future to be, a communication common carrier eligible to receive a grant of the licenses it seeks, and whether there is any public need for the common carrier service specified in the licenses it seeks, and, as part of that determination, to determine whether Collier has made a bona-fide effort to hold itself out to be a common carrier to serve the public without preference or discrimination.

(b) To determine the effect which a grant of the above-entitled application(s) and the operation in accordance with it by Collier would have upon the operation of station KSTF and KFBC–TV and upon the public served by those stations.

(c) To determine whether Collier is engaging in unfair competition with respect to Frontier and the use of copyrighted works and other literary property without the permission of or compensation to their owners and contrary to law.

(d) To determine whether Collier's station KAS41 was prematurely constructed in violation of section 319(a) of the Communications Act, and, if so, whether a license for the continued use of that station can or should be issued.

(e) To determine whether Collier has been lacking in candor in its filings with and representations to the Commission, and whether it has been lacking in candor in its representations to prospective customers of the costs and other conditions of service from Collier.

(f) To determine whether Collier is legally or otherwise qualified to be a Commission licensee.

(g) To determine whether the public interest, convenience and necessity would be served by a grant of the above-entitled application(s).

OPPOSITION TO THE PROTEST

9. Collier partially concedes Frontier's status as a party in interest and requests that Frontier's participation in any hearing herein be limited to the application for renewal of license for station KAS41, which station provides service to CATV customers in Gering and Alliance, Nebraska. Collier maintains that, insofar as service provided by stations KAQ79, KAQ80 and KAQ81 to CATV systems in Kimball and Sidney, Nebraska and Sterling, Colorado is concerned, Frontier has not established its party in interest status and that, consequently, any hearing which is set on the basis of Frontier's petition to deny, or in which Frontier should be permitted to participate, should be restricted to the renewal of license for station KAS41. Additionally, Collier contends that, with respect to the question of "economic impact" alleged to be occasioned to Frontier's broadcast operation by the CATV operations served by Collier, Frontier has failed completely to make the required statutory showing that this matter is in any way material to the question of whether or not the subject applications should be granted. Collier, while not conceding the truth of the allegations by Frontier concerning its "holding out" as a common carrier for hire, does admit that these allegations raise questions which should be resolved in a common carrier proceeding. So far as the question of property rights in television signals or the question of "unfair competition" between television stations and other members of the public is concerned, Collier contends that Frontier has utterly failed to make any showing that this matter is substantial or material to the question of whether or not its common carrier microwave licenses should be renewed. With respect to matters raised by Frontier relating to alleged prior violations by Collier of our Act and rules, Collier asserts that such matters were submitted to the Commission by Frontier in formal pleadings and determined by formal action.[3]

DISPOSITION OF THE PROTEST

10. Based upon allegations of adverse economic impact, we find and conclude

[1] The Commission's letter of April 14, 1959, disposed, in a formal action, of all the allegations in paragraph 6 above raised by Frontier.

[2] The alleged misrepresentations, to which Frontier refers as having occurred in 1960, were formally considered and disposed of by the Commission. See Commission's Memorandum Opinion and Order In re: Collier Electric Co. (FCC 60–1429), released on December 7, 1960.

[3] See footnotes 1 and 2 *supra*.

that Frontier is a party in interest only with respect to the application for renewal of license for station KAS41. Frontier's allegations of adverse economic injury are based solely upon service rendered to CATV systems in Alliance and Gering, Nebraska, which receive their service from station KAS41. Accordingly, the hearing order hereinafter set forth will limit Frontier's participation solely to renewal of the license for station KAS41.

11. In our Report and Order in Docket No. 12443, we undertook an extensive and careful review of all the considerations brought to our attention and bearing upon the alleged interrelationships between the provision of common carrier microwave relay communication service to CATVs generally and the operation of CATVs versus television broadcasters. In the Report and Order, we arrived at various considered conclusions, some of which have a direct bearing upon this situation. Thus, in paragraphs 45 through 51 of that Report and Order, we considered the impact of CATVs on television broadcasters and concluded that there was nothing that would justify us in taking action or seeking authority under which we could act, to bar CATVs from coming into or continuing to operate in a particular market. As a concomitant to this, we also concluded, in paragraphs 58 through 71, that we had no jurisdiction to regulate CATVs directly or indirectly. In paragraphs 65 through 68, and in paragraphs 78 through 79, we made various pertinent determinations concerning our lack of authority and competence to determine contested questions of property rights as between broadcasters and others on the one hand and common carriers and CATVs, on the other hand. In paragraphs 72 through 77 of our Report and Order, we set out the basis for our conclusion that it would not constitute a legally valid exercise of regulatory jurisdiction over common carriers to deny authorizations for common carrier microwave, wire or cable transmission of television programs to CATV systems on the ground that such facilities would abet the creation of adverse competitive impact by the CATV on the construction or successful operation of local or nearby television stations.[4]

12. Section 21.709 of the Commission's rules establishes a criterion by which to determine whether or not licensees in the Domestic Public Point-to-Point Microwave Radio Service have, during the preceding license period, been rendering a bona fide common carrier service to the public.[5] Exhibit No. 3, attached to Collier's renewal applications, indicates that, during the preceding license period, it has not served any subscribers with whom it has no identity of interest. In fact, the showing indicates that Collier serves only CATV systems which it wholly owns. The Commission has consistently held that common carrier status may be initially achieved by a genuine holding out of service to the public, and that the implementation of this holding out is for later review, after a reasonable opportunity to use the service had been afforded the licensee. Collier has been afforded such opportunity and this is the time for re-appraisal. Accordingly, in the hearing hereinafter provided, an appropriate issue on this matter is included.

13. Frontier's allegation of unlawful appropriation by Collier of televised program material belonging to it and other alleged owners, has not been considered in the disposition hereof. In our Memorandum Opinion and Order In re Collier Electric Company (footnote 2, above) we held, in considering the identical allegations by Frontier, that there was no legal authority to support the conclusion that any property right was invaded by one simultaneously receiving and viewing the broadcast signal in these circumstances. We also held that the ultimate decision of this question was outside the Commission's competence in the absence of any controlling statute on this point or any adjudication of this proposition by a court.[6]

14. The prior violations of our Act and rules by Collier, which Frontier now seeks to reexamine, are all matters which have been fully considered and formally disposed of by the Commission.[7] Frontier has presented nothing new in its instant petition. Accordingly, there is no need to reexamine the matters previously adjudicated.

15. With regard to Frontier's allegations that Collier was quoting widely varying rates to prospective subscribers for service over the same system, the Commission desires that a full record be made on this matter and, accordingly, an issue with respect thereto is included herein.

16. The suggested issues (a), (b), and the latter part of (e), as contained in the petition to deny, have been rewritten as four separate issues; issues (c), (d), the first part of (e) and (f) have been eliminated for the reasons set forth in paragraphs 13 and 14 above; and issue (g), which is conclusionary in nature, has been rewritten to include the issues set forth hereinafter.

17. In view of the foregoing; *It is ordered,* That the petition to deny is granted to the extent herein provided, and denied in all other respects; and that, pursuant to the provisions of Section 309(d)(2) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, in view of the nonuse of the facilities by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the facts with respect to the past business activities of Collier relating to the operation of stations KAQ79, KAQ80, KAQ81 and KAS41 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(c) To determine whether Collier has engaged in any discriminatory or unlawful practices relating to the operation of stations KAQ79, KAQ80, KAQ81 and KAS41, with respect to its representations to prospective customers of the charges for, and other conditions of service, to be rendered by it.

(d) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

(e) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of any, or all, of the applications would serve the public interest, convenience or necessity.

18. *It is further ordered,* That the burden of proof on all issues is placed on Collier; and

19. *It is further ordered,* That Frontier Broadcasting Company and the Chief, Common Carrier Bureau are made parties to the proceedings herein; and

20. *It is further ordered,* That Frontier's participation with respect to issues (a), (b), (c), (d), and (e) be limited solely to that phase of the hearing concerned with renewal of the license for station KAS41.

21. *It is further ordered,* That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Adopted: October 18, 1961.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10479; Filed, Nov. 1, 1961; 8:54 a.m.]

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[4] See also the Memorandum Opinion and Order cited in footnote 2, above.

[5] § 21.709 *Renewal of station licenses.*

(a) Upon filing applications for renewal of station license of a radio system in the Domestic Public Point-to-Point Microwave Radio Service, each such common carrier licensee who does not also operate a telephone or telegraph wireline system shall make a factual showing that, during the preceding license period, at least 50 percent of the total hours of service rendered over the radio system, and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with, the applicant.

(b) If the applicant is unable to meet the criteria set forth in paragraph (a) of this section, he shall make a factual showing of the extent of such service rendered, the specific nature, extent, and dates of any efforts the licensee has made to achieve use of the service by the public, and offer such further showing or explanation as he may deem appropriate.

(c) The showing made under paragraphs (a) and (b) of this section shall be made in duplicate and under oath and submitted with the appropriate renewal application.

[6] A decision of the U.S. District Court for the Dist. of Idaho, Southern Div., in Intermountain Broadcasting & Television Corp. v. Idaho Microwave, Inc., et al., June 26, 1961, disposing of motions for summary judgment, suggests, tentatively, no invasion of property rights in this situation.

[7] See footnotes 1 and 2 above.

[Docket No. 14320; FCC 61-1242]

CERACCHE & CO., INC.

Order Designating Application for Hearing on Stated Issues

In re application of Ceracche & Company, Incorporated, Connecticut Hill, New York, Docket No. 14320, File No. 1676-C1-R-61; for renewal of the license for station KEG51, a facility in the Domestic Public Point-to-Point Microwave Radio Service.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled application for renewal of the license for station KEG51, a facility in the Domestic Public Point-to-Point Microwave Radio Service serving a community antenna television system in Ithaca, New York; and

It appearing that the only communication service provided by the applicant is to Ceracche Television Corporation, the owner and operator of the community antenna television system serving Ithaca, New York and that an identity of ownership interest exists between the stockholders of the applicant and the community antenna television system served; and

It further appearing that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that, during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself; and

It further appearing that there is a question whether there is a need for the continued holding out of this particular common carrier communication service in light of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing, that the Commission is unable to find that a grant of the application would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled application is designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, in view of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the facts with respect to the past business activities of the applicant relating to the operation of station KEG51 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(c) To determine the nature and extent of the interest existing between applicant and the community antenna television system served by it.

(d) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

(e) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of the application would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10480; Filed, Nov. 1, 1961; 8:54 a.m.]

[Docket Nos. 14318, 14319; FCC 61-1241]

COLUMBIA BASIN MICROWAVE CO.

Order Designating Applications for Hearing on Stated Issues

In re applications of Columbia Basin Microwave Company, for renewal of the license for station KOY40, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Ephrata, Washington, Docket No. 14318, File No. 1464-C1-R-61; for consent to assignment of the license for station KOY40, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Ephrata, Washington from Patricia Hughes, d/b as Columbia Basin Microwave Company to Columbia Basin Microwave Company, Inc., Docket No. 14319, File No. 4082-C1-AL-61.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled application for renewal of the license for station KOY40, a facility in the Domestic Public Point-to-Point Microwave Radio Service serving a community antenna television system in Moses Lake, Washington, as well as the above-captioned application for consent to assignment of the subject station license from the applicant to Columbia Basin Microwave Company, Inc.; and

It appearing that the only communication service provided by the applicant is to Moses Lake T.V., Inc., the owner and operator of the community antenna television system serving Moses Lake, Washington and that Patricia Hughes owns a substantial block of stock in H & H Construction Company, the parent corporation of Moses Lake T.V., Inc.; and

It further appearing that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that, during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself; and

It further appearing that there is a question whether there is a need for the continued holding out of this particular common carrier communication service in light of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing that 49 percent of the outstanding stock of the proposed assignee corporation would be owned by Patricia Hughes and that the considerations involved in the above-captioned renewal applications are inter-related with those involved in the captioned application for assignment of license; and

It further appearing that the Commission is unable to find that a grant of the applications would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, in view of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the need for the continued holding out of this particular common carrier communication service if the above facility were assigned from Patricia Hughes, d/b as Columbia Basin Microwave Company to Columbia Basin Microwave Company, Inc.

(c) To determine the facts with respect to the past business activities of the applicant relating to the operation of station KOY40 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(d) To determine the nature and extent of the interests existing between the applicant, Patricia Hughes, d/b as Columbia Basin Microwave Company, as well as the proposed assignee, Columbia Basin Microwave Company, Inc., and H & H Construction Company and Moses Lake T.V., Inc., respectively.

(e) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

[1] Dissenting statement of Commissioner Cross filed as part of original document.

(f) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of the applications would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10481; Filed, Nov. 1, 1961; 8:54 a.m.]

[Docket No. 14268; FCC 61M-1704]

CROSBY COUNTY BROADCASTING CO.

Order Continuing Hearing

Darrell Willis, W. R. Bentley, Phil Crenshaw, Galen O. Gilbert and Lew D'Elia d/b as Crosby County Broadcasting Co., Ralls, Texas, Docket No. 14268, File No. BP-14864; for construction permit.

Pursuant to request by counsel for applicant: *It is ordered,* This 26th day of October 1961, that the hearing herein now scheduled for November 29, 1961, be, and the same is hereby rescheduled for January 16, 1962, at 10:00 a.m., in the Offices of the Commission, Washington, D.C.

Released: October 27, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10482; Filed, Nov. 1, 1961; 8:54 a.m.]

[Docket No. 14315; FCC 61-1238]

DAKOTA MICROWAVE CO.

Order Designating Application for Hearing on Stated Issues

In re application of Dakota Microwave Company, Turkey Ridge, South Dakota, Docket No. 14315, File No. 1046-C1-R-61, for renewal of the license for station KAQ71, a facility in the Domestic Public Point-to-Point Microwave Radio Service.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled application for renewal of the license for station KAQ71, a facility in the Domestic Public Point-to-Point Microwave Radio Service serving a community antenna television system in Mitchell, South Dakota; and

It appearing that the only communication service provided by the applicant is to Palace Trans-Video Company, the owner and operator of the community antenna television system serving Mitchell, South Dakota and that an identity of ownership interest exists between the applicant and the community antenna television system served; and

It further appearing that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that, during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself; and

It further appearing that there is a question whether there is a need for the continued holding out of this particular common carrier communication service in light of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing that the Commission is unable to find that a grant of the application would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled application is designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, in view of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the facts with respect to the past business activities of the applicant relating to the operation of station KAQ71 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(c) To determine the nature and extent of the interest existing between applicant and the community antenna television system served by it.

(d) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

(e) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of the application would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10483; Filed, Nov. 1, 1961; 8:54 a.m.]

[Docket Nos. 14269, 14270; FCC 61M-1705]

HERSHEY BROADCASTING CO., INC., AND READING RADIO, INC.

Order Following Prehearing Conference

In re applications of Hershey Broadcasting Company, Inc., Hershey, Pennsylvania, Docket No. 14269, File No. BPH-3246; Reading Radio, Inc., Reading, Pennsylvania, Docket No. 14270, File No. BPH-3322; for construction permits.

As a result of agreements reached upon the record of a prehearing conference held October 25, 1961 in the above-entitled matter: *It is ordered,* This 26th day of October 1961:

1. Engineering exhibits shall be exchanged on or before November 28, 1961;

2. An informal conference shall be had among the parties December 12, 1961;

3. Notification of witnesses shall be given December 13, 1961; and

4. Hearing on the engineering phases of this matter shall be held commencing at 10:00 a.m., December 19, 1961 (in lieu of the hearing on all issues now scheduled to commence on November 27, 1961).

Released: October 27, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10484; Filed, Nov. 1, 1961; 8:54 a.m.]

[Docket Nos. 14256, 14257 FCC 61M-1703]

CLARENCE EVERETT JONES AND ROBERT S. TAYLOR

Order Following Prehearing Conference

In re applications of Clarence Everett Jones, St. George, South Carolina, Docket No. 14256, File No. BP-13022; Robert S. Taylor, Aiken, South Carolina, Docket No. 14257, File No. BP-13892; for construction permits.

As a result of agreements reached upon the record of a prehearing conference held this date in the above-entitled matter: *It is ordered,* This 26th day of October 1961:

1. Taylor's engineering exhibits shall be supplied to Jones on or before November 27, 1961;

2. Jones's engineering exhibits shall be supplied to Taylor on or before December 11, 1961;

3. Both parties shall exchange their 307(b) exhibits on or before December 11, 1961;

[1] Dissenting statement of Commissioner Cross filed as part of original document.

[1] Dissenting statement of Commissioner Cross filed as part of original document.

4. Notification of witnesses shall be made on or before December 18, 1961; and

5. The hearing presently scheduled for November 29, 1961 is rescheduled to commence at 10:00 a.m., December 27, 1961 in the Commission's offices in Washington, D.C.

Released: October 27, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10485; Filed, Nov. 1, 1961; 8:54 a.m.]

[Docket Nos. 14334, 14335; FCC 61-1246]

MESA MICROWAVE, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Mesa Microwave, Inc., Docket No. 14334, File No. 2843-C1-R-61, for renewal of the license for station KLH35, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Silverton, Texas; Docket No. 14335, File No. 2844-C1-R-61, for renewal of the license for station KLH36, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Memphis, Texas.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled applications for renewal of the licenses for stations KLH35 and KLH36, facilities in the Domestic Public Point-to-Point Microwave Radio Service serving community antenna television systems in Memphis, Wellington, and Childress, Texas; and

It appearing that the only communication service provided by the applicant is to Vumore Company, the owner and operator of the respective community antenna television systems serving Memphis, Wellington, and Childress, Texas and that both applicant and Vumore Company are wholly-owned subsidiaries of Video Independent Theatres, Inc.; and

It further appearing that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself; and

It further appearing that there is a question whether there is a need for the continued holding out of this particular common carrier communication service in light of the non-use of the facilities by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing that the Commission is unable to find that a grant of the applications would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, in view of the non-use of the facilities by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the facts with respect to the past business activities of the applicant relating to the operation of stations KLH35 and KLH36 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(c) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

(d) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of the applications would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10486; Filed, Nov. 1, 1961; 8:54 a.m.]

[Docket No. 14347; FCC 61-1263]

MESA MICROWAVE, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Mesa Microwave, Inc., Docket No. 14347, File Nos. 3664-C1-P-61, 3665-C1-P-61; for construction permits to establish stations in the Point-to-Point Microwave Radio Service at Pledger and Rhodes Ranch, Texas.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of October 1961;

The Commission having under consideration the above-entitled applications of Mesa Microwave, Inc. (hereinafter called Mesa) for construction permits to establish fixed (video) point-to-point microwave stations at Pledger and Rhodes Ranch, Texas; and

It appearing that the only communication service to be provided over the proposed facilities is to Vumore Company (hereinafter called Vumore), a community antenna television system presently serving Port Lavaca, Texas, and that both Mesa and Vumore are wholly owned subsidiaries of Video Independent Theatres, Inc.; and

It further appearing, that there is a question whether there is a need for the holding out of this particular common carrier communication service in view of the apparent absence of any present or prospective request for such service from any public subscribers, i.e., persons or entities with whom Mesa is not directly or indirectly affiliated; and

It further appearing that the Commission is unable to find that a grant of the applications would serve the public interest, convenience or necessity; and

It further appearing, that, since the determination of issues hereinafter designated will involve facts common to the captioned applications as well as to certain related applications of Mesa designated for hearing in Docket Nos. 14334 and 14335,, a consolidated hearing on all such applications is desirable;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, a hearing be held herein, at the offices of the Commission in Washington, D.C., at a time and place to be hereafter specified, on the following issues:

(a) To determine the legal, financial and other relationships heretofore and presently existing between Vumore Company, Video Independent Theatres, Inc., and Mesa Microwave, Inc., respectively.

(b) To determine the need for the holding out of this particular common carrier service in view of the apparent absence of any present or prospective request for such service from any public subscribers, i.e., persons or entities with whom Mesa is not directly or indirectly affiliated.

(c) To determine, in light of the evidence adduced on the foregoing issues, whether a grant of the applications would serve the public interest, convenience or necessity.

It is further ordered, That the hearing on the issues specified above be consolidated with the hearing in Docket Nos. 14334 and 14335; and

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein; and

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with the provisions of § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10487; Filed, Nov. 1, 1961; 8:55 a.m.]

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[1] Dissenting statement of Commissioner Cross filed as part of the original document.

[Docket No. 14330; FCC 61-1244]

NEW YORK PENN MICROWAVE CORP.

Order Designating Application for Hearing on Stated Issues

In re application of New York Penn Microwave Corporation, Canisteo, New York, Docket No. 14330, File No. 2590-C1-R-61; for renewal of the license for station KEG41, a facility in the Domestic Public Point-to-Point Microwave Radio Service.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled application for renewal of the license for station KEG41, a facility in the Domestic Public Point-to-Point Microwave Radio Service serving a community antenna television system in Corning, New York; and

It appearing that the only communication service provided by the applicant is to Corning Community Television Corporation, the owner and operator of the community antenna television system serving Corning, New York and that the stockholders of the applicant own 100 percent of the stock of such customer; and

It further appearing that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself; and

It further appearing that there is a question whether there is a need for the continued holding out of this particular common carrier communication service in light of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing that the Commission is unable to find that a grant of the application would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled application is designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, in view of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the facts with respect to the past business activities of the applicant relating to the operation of station KEG41 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(c) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

(d) To determine in the light of the evidence adduced on the foregoing issues, whether a grant of the application would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10488; Filed, Nov. 1, 1961; 8:55 a.m.]

[Docket No. 14255; FCC 61M-1712]

RADIO-ACTIVE BROADCASTING, INC. (WATO)

Order Following Prehearing Conference Continuing Hearing

In re application of Radio-Active Broadcasting, Inc. (WATO), Oak Ridge, Tennessee, Docket No. 14255, File No. BP-13833; for construction permit.

The Hearing Examiner having under consideration the proceedings at the prehearing conference in the above-entitled matter held on October 27, 1961, and the agreements of the parties as approved therein by the Examiner:

It is ordered, This 27th day of October 1961, that:

(1) The direct case of the applicant with respect to all the issues shall be presented in the form of written sworn exhibits;

(2) Copies of the applicant's exhibits shall be furnished to all other parties and to the Examiner no later than December 11, 1961;

(3) In the period between December 11, 1961 and December 22, 1961, the parties or their respective engineers shall consult regarding any problems which may be found to exist with respect to any engineering exhibits furnished by the applicant on December 11, 1961;

(4) No later than December 22, 1961, the applicant shall furnish to the other parties and to the Examiner copies of any revised engineering exhibits which he may desire to submit as a result of discussions held with the other parties or their engineers regarding such engineering exhibits;

(5) The other parties to the proceeding shall no later than December 22, 1961, notify the applicant and the Examiner of the names of the witnesses they desire to cross-examine and the applicant so notified shall make such witnesses available at the hearing: *Provided, however,* That, should the applicant furnish revised engineering exhibits pursuant to subparagraph (4) hereinabove by December 22, 1961, the time for notification regarding the names of witnesses to be cross-examined with respect to such revised engineering exhibits shall be extended to December 29, 1961, and the applicant shall make the witnesses so requested available for cross-examination at the hearing;

It is further ordered, That the hearing heretofore scheduled to begin on November 30, 1961, is hereby rescheduled to commence on January 4, 1962, at 10:00 a.m. at the Offices of the Commission in Washington, D.C.; and

It is further ordered, That the agreements and understandings entered into between the parties concerning the future conduct of the hearing are approved as set forth in the transcript of the prehearing conference which, to this extent, is incorporated herein by reference and, in this connection, the attention of the applicant is specifically invited to those portions of the transcript of prehearing conference wherein particular requests were made for data to be included in proposed exhibits.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10489; Filed, Nov. 1, 1961; 8:55 a.m.]

[Docket Nos. 14259, 14261; FCC 61M-1713]

RADIO ALEXANDER CITY AND CLAY SERVICE CORP.

Order Continuing Hearing

In re applications of Hudie M. Brown and Eathel Holley, d/b as Radio Alexander City, Alexander City, Alabama, Docket No. 14259, File No. BP-13309; Clay Service Corporation, Ashland, Alabama, Docket No. 14261, File No. BP-13795; for construction permits.

It is ordered, This 27th day of October 1961, pursuant to a prehearing conference in this proceeding as of this date, that (1) the exchange of exhibits by the parties will be accomplished on or before November 27, 1961, (2) the parties will notify each other as to the witnesses desired for cross-examination on or before December 8, 1961, and (3) the hearing now scheduled for November 27, 1961, be, and the same is hereby rescheduled for January 9, 1962, 10:00 a.m., in the Offices of the Commission, Washington, D.C.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10490; Filed, Nov. 1, 1961; 8:55 a.m.]

[1] Dissenting statement of Commissioner Cross filed as part of the original document.

[Docket Nos. 14331—14333; FCC 61-1245]

SUPERIOR COMMUNICATIONS CO., INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Superior Communications Co., Inc., Docket No. 14331, File No. 1710-C1-R-61, for renewal of the license for station KAQ73, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Virginia, Minnesota; Docket No. 14332, File No. 1711-C1-R-61, for renewal of the license for station KAQ74, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Kabetogama, Minnesota; Docket No. 14333, File No. 1712-C1-R-61, for renewal of the license for station KAQ75, a facility in the Domestic Public Point-to-Point Microwave Radio Service at Gheen, Minnesota.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled applications for renewal of the licenses for stations KAQ73, KAQ74 and KAQ75, facilities in the Domestic Public Point-to-Point Microwave Radio Service serving a community antenna television system in International Falls, Minnesota; and

It appearing that the only communication service provided by the applicant is to International T.V. Cable Corporation, the owner and operator of the community antenna television system serving International Falls, Minnesota and that Mr. Arthur L. Allard, president of Superior Communications Co., Inc. owns 77 percent of applicant's stock as well as 70 percent of the stock in International T.V. Cable Corporation; and

It further appearing that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself; and

It further appearing that there is a question whether there is need for the continued holding out of this particular common carrier communication service in light of the non-use of the facilities by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing that the Commission is unable to find that a grant of the applications would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, in view of the non-use of the facilities by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the facts with respect to the past business activities of the applicant relating to the operation of stations KAQ73, KAQ74, and KAQ75 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(c) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

(d) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of the applications would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10491; Filed, Nov. 1, 1961; 8:55 a.m.]

[Docket No. 14317; FCC 61-1240]

WESTERN TV RELAY, INC.

Order Designating Application for Hearing on Stated Issues

In re application of Western TV Relay, Inc., Weatherford, Oklahoma, Docket No. 14317, File No. 2985-C1-R-61; for renewal of the license for station KLF85, a facility in the Domestic Public Point-to-Point Microwave Radio Service.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of October 1961;

The Commission having under consideration the above-entitled application for renewal of the license for station KLF85, a facility in the Domestic Public Point-to-Point Microwave Radio Service serving a community antenna television system in Elk City, Oklahoma; and

It appearing that the only communication service provided by the applicant is to Community T.V., the owner and operator of the community antenna television system serving Elk City, Oklahoma and that an identity of ownership interest exists between the applicant and the community antenna television system served; and

It further appearing that applicant has been unable to show compliance with that portion of § 21.709 of our rules which requires that, during the preceding license period, at least 50 percent of the total hours of service rendered over its radio system and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with itself; and

It further appearing that there is a question whether there is a need for the continued holding out of this particular common carrier communication service in light of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated, as set forth above; and

It further appearing, that the Commission is unable to find that a grant of the application would serve the public interest, convenience or necessity;

It is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-entitled application is designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

(a) To determine the need for the continued holding out of this particular common carrier communication service, in view of the non-use of the facility by public subscribers, i.e., persons or entities with whom the licensee is not directly or indirectly affiliated.

(b) To determine the facts with respect to the past business activities of the applicant relating to the operation of station KLF85 and the efforts made to make Domestic Public Point-to-Point Microwave Radio Service available to the public.

(c) To determine the nature and extent of the interest existing between applicant and the community antenna television system served by it.

(d) To determine, in light of the determinations made on the foregoing issues, whether the applicant should be afforded a continued opportunity to hold itself out as a communication common carrier, or whether, in light of such determinations, such holding out should be terminated.

(e) To determine, in the light of the evidence adduced on the foregoing issues, whether a grant of the application would serve the public interest, convenience or necessity.

It is further ordered, That the Chief, Common Carrier Bureau is made a party to the proceeding herein;

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: October 30, 1961.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-10492; Filed, Nov. 1, 1961; 8:55 a.m.]

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[1] Dissenting statement of Commissioner Cross filed as part of the original document.

[1] Dissenting statement of Commissioner Cross filed as part of the original document.

FEDERAL POWER COMMISSION

[Docket No. E-7015]

ROCKLAND ELECTRIC CO.

Notice of Application

OCTOBER 27, 1961.

Take notice that on October 23, 1961, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Rockland Electric Company ("Applicant") a corporation organized under the laws of the State of New Jersey and doing business in the States of New Jersey and New York with its principal business office at Nyack, New York, seeking an order authorizing the issuance of short-term unsecured promissory notes in the maximum principal amount of $5,200,000 outstanding at any one time. Applicant proposes to issue to commercial banks or similar institutions from time to time short-term unsecured promissory notes in the maximum principal amount of $5,200,000 outstanding at any one time, such notes to mature not later than one year from the date of issue thereof and in no event later than March 31, 1965. The interest rate of said notes shall not be over ¼ of 1 percent in excess of the prime rate prevailing in New York City at the time of initial issuance. At present, Applicant is authorized by the Commission to issue not in excess of $2,700,000 principal amount of short-term notes maturing not later than December 31, 1961. The notes would include notes presently outstanding, presently aggregating $1,400,000. Applicant states that the balance of the proceeds from the securities would be used for construction, completion, extension or improvement of its facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before the 17th day of November 1961, file with the Federal Power Commission, Washington 25, D.C., petitions or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-10424; Filed, Nov. 1, 1961; 8:46 a.m.]

FEDERAL MARITIME COMMISSION

CUNARD STEAM-SHIP CO., LTD., AND ALCOA STEAMSHIP CO., INC.

Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement Numbered 8736, between Cunard Steam-Ship Company Limited and Alcoa Steamship Company, Inc., covers a through billing arrangement in the trade from Le Havre to Puerto Rico, with transhipment at New York or Baltimore.

Agreement Numbered 8737, between Cunard Steam-Ship Company Limited and Alcoa Steamship Company, Inc., covers a through billing arrangement in the trade from Le Havre to the Virgin Islands, with transhipment at New York or Baltimore.

Interested parties may inspect these agreements and obtain copies thereof at the Office of Regulations, Federal Maritime Commission, Washington, D.C., and may submit within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to either of these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: October 30, 1961.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 61-10441; Filed, Nov. 1, 1961; 8:48 a.m.]

WILH. WILHELMSEN LINE JOINT SERVICE

Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement Numbered 7589-2, between the carriers comprising the Wilh. Wilhelmsen Line joint service, modifies the approved agreement of that joint service (Numbered 7589, as amended), which covers worldwide trades. The purpose of the modification is to include the trade to and from Cuba and East Coast of Mexico within the scope of the joint service.

Interested parties may inspect this agreement and obtain copies thereof at the Office of Regulations, Federal Maritime Commission, Washington, D.C., and may submit within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: October 30, 1961.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 61-10442; Filed, Nov. 1, 1961; 8:48 a.m.]

[Docket No. 954]

INVESTIGATION OF RATES AND PRACTICES IN ATLANTIC-GULF/PUERTO RICO TRADE

Notice of Supplemental Orders

On October 16, 1961, the Federal Maritime Commission entered the following Seventh and Eighth Supplemental Orders to the original Order in this proceeding dated July 17, 1961:

SEVENTH SUPPLEMENTAL ORDER

It appearing that there is currently pending an investigation into and a hearing concerning certain reduced rates and practices from Atlantic and Gulf coast ports of the United States to ports in the Commonwealth of Puerto Rico which became effective on July 6, 1961, and on various dates thereafter; and

It further appearing, that Alcoa Steamship Company, Inc. (Alcoa), and Sea-Land of Puerto Rico, division of Sea-Land Service, Inc., and its successor Sea-Land Service, Inc., Puerto Rican Division, hereafter separately or collectively, as the context may require, referred to as Sea-Land, have been named respondents in the said proceeding; and

It further appearing, that on September 21, 1961, Alcoa filed with the Federal Maritime Commission (Commission) certain revised pages, hereinafter described, to Alcoa's Outward Freight Tariff No. 2, FMB-F No. 2, to become effective October 22, 1961, which said pages publish new increased rates on the following commodities:

Commodity	*Published on—*
Clay, ball or china	1st revised p. 46.
Flint rock, pulverized (clay body mix), in bags.	1st revised p. 54.
Gypsum rock, in bags	1st revised p. 57.
Lime, slacked	1st revised p. 65.
Limestone, in bags	1st revised p. 65.

It further appearing, that on October 4, 1961, Sea-Land filed with the Commission certain revised pages, hereinafter described, to its Outward Freight Tariff No. 2, FMB-F No. 3 (Pan-Atlantic Steamship Corporation, Series), to become effective November 4, 1961, which said pages publish new increased rates on the following commodities:

Commodity	*Published on—*
Clay, ball or china	4th revised p. 43.
Flint rock, pulverized (clay body mix), in bags.	4th revised p. 53.
Gypsum rock, in bags	2d revised p. 58.

It further appearing, that the Commission is of the opinion that the said Alcoa and Sea-Land schedules and the rates, charges, classifications, rules, regulations, tariffs, and practices contained therein should be made the subject of a public investigation and hearing to determine whether they are just, reasonable, and otherwise lawful under the Shipping Act, 1916, as amended, or the Intercoastal Shipping Act, 1933, as amended; and

It further appearing, that the aforementioned rate reductions and increases indicate the existence of unstable conditions in the aforementioned trade, which said conditions may result not only from the said rate reductions or increases but also from their relationship to the rates charged by all carriers in the aforementioned trade for transportation of the aforementioned commodities;

Now therefore it is ordered, That, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant, this proceeding be, and it hereby is, expanded to

include, in addition to the matters now under suspension or investigation, an investigation of and a hearing concerning, the lawfulness under the Shipping Act, 1916, as amended, or the Intercoastal Shipping Act, 1933, as amended, of the rates, rate reductions, increases, revisions, rules, conditions, charges, tariffs, regulations, or practices stated in the aforementioned Alcoa and Sea-Land schedules, as well as those stated with respect to the aforementioned commodities in schedules heretofore filed on various dates by American Union Transport, Inc. (AUT), A. H. Bull Steamship Company (Bull), Lykes Bros. Steamship Company, Inc. (Lykes), TMT Trailer Ferry, Inc. (TMT), and Waterman Steamship Corporation of Puerto Rico (Waterman), except that where such carriers move the said commodities under cargo n.o.s. rates as hereinafter indicated, the said cargo n.o.s. rate is, to that extent placed under investigation, as follows:

AUT Southbound Freight Tariff No. 6, FMB–F No. 6

Commodity	*Published on—*
Clay, ball or china (cargo n.o.s., nonhazardous).	2d revised p. 20.
Flint rock, pulverized (clay body mix), in bags (cargo n.o.s., nonhazardous).	2d revised p. 20.
Gypsum rock, in bags (cargo n.o.s., nonhazardous).	2d revised p. 20.
Lime, slacked (cargo n.o.s, nonhazardous).	2d revised p. 20.
Limestone, in bags (cargo n.o.s., nonhazardous).	2d revised p. 20.

Bull Outward Freight Tariff No. 1, FMB–F No. 1

Clay, ball or china	Original p. 40.
Flint rock, pulverized (clay body mix), in bags.	Original p. 48.
Gypsum rock, in bags	1st revised p. 51.
Lime, slacked	Original p. 59.
Limestone, in bags	Original p. 59.

Sea-Land Outward Freight Tariff No. 2, FMB–F No. 3 (Pan-Atlantic Steamship Corporation Series)

Lime, slacked	4th revised p. 72.
Limestone, in bags (cargo n.o.s., nonhazardous).	2d revised p. 41.

TMT Freight Tariff No. 3, FMB–F No. 3

Clay, ball or china	2d revised p. 57.
Flint rock, pulverized (clay body mix), in bags (cargo n.o.s., nonhazardous).	4th revised p. 54.
Gypsum rock, in bags (cargo n.o.s., nonhazardous).	4th revised p. 54.
Lime, slacked	2d revised p. 91.
Limestone, in bags (cargo n.o.s., nonhazardous).	4th revised p. 54.

U.S. Atlantic & Gulf-Puerto Rico Outward Freight Tariff No. 1, FMB–F No. 1 Richard Kinsella, agent, Lykes and Waterman being participating carriers named therein

Clay, ball or china	Original p. 50.
Flint rock, pulverized (clay body mix), in bags.	Original p. 57.
Gypsum rock, in bags	Original p. 61.
Lime, slacked	Original p. 68.
Limestone, in bags	Original p. 68.

and

It is further ordered, That all subsequent revisions, cancellations, amendments, reissues, or replacements of the said schedules by other schedules subsequently filed by the respondents in this proceeding, shall be, and they are hereby, placed under investigation in this proceeding; and

It is further ordered, That copies of this order shall be filed in the Office of Regulations of the Federal Maritime Commission with the tariff schedules hereby placed under investigation; and

It is further ordered, That (I) the investigation herein ordered be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners, at a date and place to be determined and announced by the Chief Examiner, to receive evidence which will provide an adequate record for proper disposition of the issues, and that an initial decision be issued; (II) a copy of this order shall forthwith be served upon all protestants herein and upon Alcoa, AUT, Bull, Lykes, Sea-Land, TMT, Waterman, and United States Atlantic and Gulf-Puerto Rico Conference, Richard Kinsella, agent, all heretofore named respondents herein; (III) the said protestants and respondents be duly notified of the time and place of the hearing herein ordered; and (IV) this order and notice of the said hearing be published in the FEDERAL REGISTER.

EIGHTH SUPPLEMENTAL ORDER

It appearing, that there is currently pending an investigation into and a hearing concerning certain reduced rates and practices from Atlantic and Gulf coast ports of the United States to ports in the Commonwealth of Puerto Rico which became effective on July 6, 1961, and on various dates thereafter; and

It further appearing, that TMT Trailer Ferry, Inc. (TMT), has been named a respondent in the said proceeding; and

It further appearing, that on September 14, 1961, TMT filed with the Federal Maritime Commission (Commission) certain revised schedules, hereinafter described, to TMT's Southbound Freight Tariff No. 3, FMB–F No. 3, to become effective October 15, 1961, whereby new rates have been added to, or rates changed in, the said tariff by reason of the following new, or changed, commodity descriptions published on the pages indicated:

Commodity	*Published on—*
Ammonium Nitrate in drums, dry.	5th revised p. 46.
Chemicals, n.o.s., hazardous and nonhazardous.	2d revised p. 56.
Fertilizer, n.o.s., nonhazardous.	3d revised p. 69.

It further appearing, that the Commission is of the opinion that the said TMT schedules and the rates, charges, classifications, rules regulations, tariffs, and practices contained therein should be made the subject of a public investigation and hearing to determine whether they are just, reasonable, and otherwise lawful under the Shipping Act, 1916, as amended, or the Intercoastal Shipping Act, 1933, as amended; and

It further appearing, that the aforementioned new rates or rate changes indicate the existence of unstable conditions in the aforementioned trade, which said conditions may result not only from the said new rates or rate changes but also from their relationship to the rates charged by all carriers in the aforementioned trade for transportation of the aforementioned commodities;

Now, therefore it is ordered, That with a view to making such findings and orders in the premises as the facts and circumstances shall warrant, this proceeding be, and it hereby is, expanded to include, in addition to the matters now under suspension or investigation, an investigation of and a hearing concerning, the lawfulness under the Shipping Act, 1916, as amended, or the Intercoastal Shipping Act, 1933, as amended, of the rates, rate reductions, increases, revisions, rules, conditions, charges, tariffs, regulations, or practices stated in the aforementioned TMT schedules, as well as those stated with respect to the aforementioned commodities in schedules heretofore filed on various dates by Alcoa Steamship Company, Inc. (Alcoa), American Union Transport, Inc. (AUT), A. H. Bull Steamship Company (Bull), Lykes Bros. Steamship Company, Inc. (Lykes), Sea-Land Service, Inc., Puerto Rican Division (Sea-Land), and Waterman Steamship Corporation of Puerto Rico (Waterman), except that where such carriers move the said commodities under cargo n.o.s. rates as hereinafter indicated, the said cargo n.o.s. rate is that extent placed under investigation, as follows:

Alcoa Outward Freight Tariff No. 2, FMB–F No. 2

Commodity	*Published on—*
Chemicals, n.o.s., hazardous.	1st revised p. 45.
Fertilizer, viz: Ammonium nitrate, mixed fertilizer in bags, and ammonium nitrate (organic coated or nonorganic coated) in wooden or fibre drums.	2d revised p. 51.
Fertilizer, viz: n.o.s. in bags.	Original p. 52.

AUT Southbound Freight Tariff No. 6, FMB–F No. 6

Chemicals, n.o.s., hazardous.	5th revised p. 21.
Ammonium nitrate and fertilizer, n.o.s. (cargo, n.o.s. hazardous and nonhazardous).	2d revised p. 20.

Bull Outward Freight Tariff No. 1, FMB–F No. 1

Chemicals, n.o.s., hazardous.	1st revised p. 39.
Fertilizer, n.o.s., in bags	Original p. 45.
Fertilizer, viz: Ammonium nitrate, mixed fertilizer, in bags, and ammonium nitrate (organic coated or nonorganic coated) in wooden or fibre drums.	Original p. 45.

Sea-Land Outward Freight Tariff No. 2, FMB–F No. 3

Chemicals, n.o.s., hazardous.	4th revised p. 43.
Fertilizer, viz: n.o.s., in bags.	1st revised p. 52.
Fertilizer, viz: Ammonium nitrate mixed, in bags.	1st revised p. 52.
Ammonium nitrate, in drums (cargo n.o.s. hazardous).	2d revised p. 41.

U.S. Atlantic & Gulf-Puerto Rico Outward Freight Tariff No. 1 FMB–F No. 1, Richard Kinsella, agent, Lykes and Waterman participating carriers therein

Chemicals, n.o.s., hazardous.	1st revised p. 49.
Fertilizer, viz: Ammonium nitrated, mixed fertilizer in bags and ammonium nitrate (organic coated or nonorganic coated) in wooden or fibre drums.	1st revised p. 56.
Fertilizer, viz: n.o.s., in bags.	1st revised p. 56–A.

and

It is further ordered, That all subsequent revisions, cancellations, amendments, reissues, or replacements of the said schedules by other schedules subsequently filed by the respondents in this proceeding, shall be, and they are hereby, placed under investigation in this proceeding; and

It is further ordered, That copies of this order shall be filed in the Office of Regulations of the Federal Maritime Commission with the tariff schedules hereby placed under investigation; and

It is further ordered, That (I) the investigation herein ordered be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners, at a date and place to be determined and announced by the Chief Examiner, to receive evidence which will provide an adequate record for proper disposition of the issues, and that an initial decision be issued; (II) a copy of this order shall forthwith be served upon all protestants herein and upon Alcoa, AUT, Bull, Lykes, Sea-Land, TMT, Waterman, and the United States Atlantic and Gulf-Puerto Rico Conference, Richard Kinsella, agent, all heretofore named respondents herein; (III) the said protestants and respondents be duly notified of the time and place of the hearing herein ordered; and (IV) this order and notice of the said hearing be published in the FEDERAL REGISTER.

Dated: October 30, 1961.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 61–10443; Filed, Nov. 1, 1961; 8:49 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–3848]

APEX MINERALS CORP.

Order Summarily Suspending Trading

OCTOBER 27, 1961.

In the matter of trading on the San Francisco Mining Exchange in the common stock, $1.00 par value of Apex Minerals Corporation; File No. 1–3848.

The common stock, $1.00 par value, of Apex Minerals Corporation, being listed and registered on the San Francisco Mining Exchange, a national securities exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2–2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19(a)(4) of the Securities Exchange Act of 1934 that trading in said security on the San Francisco Mining Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for a period of ten (10) days, October 28, 1961 to November 6, 1961, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 61–10427; Filed, Nov. 1, 1961; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[No. 33888]

UTAH INTRASTATE FREIGHT RATES AND CHARGES

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 20th day of October A.D. 1961.

It appearing that in Ex Parte No. 212, Increased Freight Rates, 1958, 304 I.C.C. 289, and in Ex Parte No. 223, Increased Freight Rates, 1960, 311 I.C.C. 373, the Commission authorized carriers subject to the Interstate Commerce Act parties thereto to make certain increases in their freight rates and charges for interstate application throughout the United States, and that increases under such authorizations have been made;

It further appearing that a petition, dated September 18, 1961, has been filed on behalf of The Denver and Rio Grande Western Railroad Company and other common carriers by railroad operating to, from and between points in the State of Utah, named in Appendix A to the petition, averring that the Public Service Commission of Utah has failed to authorize or permit petitioners to increase their freight rates on intrastate traffic corresponding to those authorized for interstate traffic in Ex Parte Nos. 212 and 223, supra, and alleging that such failure causes and results in undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, and in undue, unreasonable and unjust discrimination against and undue burden on interstate or foreign commerce in violation of section 13 of the Interstate Commerce Act;

And it further appearing that by the said petition there have been brought in issue rates and charges made or imposed by authority of the State of Utah;

It is ordered, That in response to the said petition an investigation be, and it is hereby, instituted, and that a hearing be held therein for the purpose of receiving evidence from the respondents hereinafter designated and any other persons interested to determine whether the rates and charges of the common carriers by railroad, or any of them, operating in the State of Utah, for the intrastate transportation of property, made or imposed by authority of the State of Utah, cause or will cause, by reason of the failure of such rates and charges to include increases corresponding to those permitted by this Commission for interstate traffic in Ex Parte No. 212 and Ex Parte No. 223, supra, any undue or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against, or undue burden on, interstate or foreign commerce, and to determine what rates and charges, if any, or what maximum or minimum, or maximum and minimum, rates and charges shall be prescribed to remove the unlawful advantage, preference, prejudice, discrimination, or undue burden, if any, that may be found to exist;

It is further ordered, That all common carriers by railroad operating within the State of Utah, which are subject to the jurisdiction of this Commission, be, and they are hereby, made respondents to this preceeding; that a copy of this order be served upon each of the said respondents; and that the State of Utah be notified of the proceeding by sending copies of this order and of said petition by certified mail to the Governor of said State and to the Public Service Commission of Utah at Salt Lake City, Utah;

It is further ordered, That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D.C., for public inspection, and by filing a copy with the Federal Register Division, Washington, D.C.;

And it is further ordered, That this proceeding be assigned for hearing at such time and place as the Commission may hereafter designate.

By the Commission, Division 2.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 61–10437; Filed, Nov. 1, 1961; 8:48 a.m.]

[Notice 183]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

OCTOBER 27, 1961.

The following letter-notices of proposals to operate over deviation routes for operating convenience only with service at no intermediate points have been filed with the Interstate Commerce Commission, under the Commission's deviation rules revised, 1957 (49 CFR 211.1 (c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's deviation rules revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 1658 (Deviation No. 5), NORWALK TRUCK LINES INC. OF DELAWARE, 1091 Manheim Pike, Lancaster, Pa., filed October 16, 1961. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over deviation routes as follows: (A) From Pennsylvania Turnpike Interchange No. 16 (near Middlesex, Pa.) over Pennsylvania Turnpike to junction New Jersey Turnpike (Interchange No. 6); (B) from junction Pennsylvania Turnpike and Pennsylvania Turnpike Extension (east of Norristown, Pa.) over Pennsylvania Turnpike Extension to Scranton, Pa.; (C) from junction New Jersey Highway 49 and New Jersey Turnpike (Interchange No. 1) over New Jersey Turnpike to junction U.S. Highway 46 and New Jersey Turnpike; and (D) from Buffalo, N.Y., over New York Thruway to Interchange 45 of the New York Thruway near Rochester, N.Y., and return over the same routes, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: From junction U.S. Highway 11 and Pennsylvania Turnpike near Middlesex over U.S. Highway 11 to Harrisburg, Pa., thence over U.S. Highway 230 to Lancaster, Pa., thence over U.S. Highway 30 to Philadelphia, Pa.; from Scranton, over U.S. Highway 611 to junction Pennsylvania Highway 12, thence over Pennsylvania Highway 12 to Nazareth, Pa., thence over Pennsylvania Highway 45 to Easton, Pa., thence over U.S. Highway 611 to Philadelphia (also from Nazareth over Pennsylvania Highway 12 to Bethlehem, Pa., thence over unnumbered highway (formerly U.S. Highway 22) to Allentown, Pa., thence over U.S. Highway 309 to Philadelphia); from Wilmington, Del., over U.S. Highway 202 to junction U.S. Highway 322, thence over U.S. Highway 322 to Chester, Pa., thence over U.S. Highway 13 to Philadelphia, thence over U.S. Highway 1 to New York, N.Y.; from Buffalo over New York Highway 5 to Batavia, N.Y., thence over New York Highway 33 to Rochester, thence over New York Highway 96 to junction New York Highway 332, thence over New York Highway 332 to Canandaigua, N.Y. (also from Batavia over New York Highway 5 to Canandaigua), thence over New York Highway 5 via Geneva, N.Y., to Albany, N.Y., thence over U.S. Highway 9 and also over U.S. Highway 9W to New York, and return over the same routes.

No. MC 2998 (Deviation No. 1), WOLVERINE EXPRESS, INCORPORATED, 701 Erie Avenue, Muskegon, Mich., filed October 13, 1961. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Scottville, Mich., over U.S. Highway 10 to Clare, Mich., thence over U.S. Highway 27 to Lansing, Mich., and return over the some route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Scottville, over U.S. Highway 10 to junction U.S. Highway 31, thence over U.S. Highway 31 to Muskegon, thence over U.S. Highway 16 to Lansing, and return over the same route.

No. MC 42487 (Deviation No. 10), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 9 First Street, San Francisco 5, Calif., filed October 18, 1961. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general* commodities, with certain exceptions, over a deviation route as follows: From Minneapolis, Minn., over Minnesota Highway 7 to junction U.S. Highway 212, at or near Montevideo, Minn., thence over U.S. Highway 212 to its junction with Montana Highway 8 approximately 3 miles northwest to Broadus, Mont., thence over Montana Highway 8 to junction U.S. Highway 87 near Crow Agency, Mont., thence over U.S. Highway 87 to junction U.S. Highway 10, and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From the junction of U.S. Highways 10 and 87 (east of Billings, Mont.), over U.S. Highway 10 to Fargo, N. Dak., and thence over U.S. Highway 52 to Minneapolis, and return over the same route.

No. MC 44447 (Deviation No. 4), SUBURBAN MOTOR FREIGHT, INC., 1100 King Avenue, Columbus 12, Ohio, filed October 18, 1961. Attorney Taylor C. Burneson, 3430 LeVeque-Lincoln Tower, 50 West Broad Street, Columbus 15, Ohio. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Bridgeport, Ohio, over Ohio Highway 7 to Belpre, Ohio, thence over U.S. Highway 50 to Parkersburg, W. Va., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Bridgeport, over U.S. Highway 40 to Wheeling, W. Va., thence over West Virginia Highway 2 to Parkersburg, and return over the same route.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 61-10384; Filed, Oct. 31, 1961; 8:51 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 30, 1961.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 37426: *Salt from Michigan and Ohio points to Memphis, Tenn.* Filed by Traffic Executive Association-Eastern Railroads, Agent (E.R. No. 2590), for interested rail carriers. Rates on salt, bulk, in carloads, from Manistee, Marysville, Midland, and St. Clair, Mich., Akron and Rittman, Ohio, to Memphis, Tenn.

Grounds for relief: Market competition.

Tariff: Supplement 49 to Traffic Executive Association-Eastern Railroads tariff I.C.C. 4534.

FSA No. 37427: *Chemicals from Chaison and Houston, Tex., to Arkendale, Va.* Filed by Southwestern Freight Bureau, Agent (No. B-8099), for interested rail carriers. Rates on motor fuel, anti-knock compound, in tank-car loads, from Chaison and Houston, Tex., to Arkendale, Va.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 15 to Southwestern Freight Bureau tariff I.C.C. 4435.

FSA No. 37428: *Phosphate Rock to points in Missouri.* Filed by O. W. South, Jr., Agent (No. A4139), for interested rail carriers. Rates on phosphate rock and precipitated phosphate dust, in carloads, from L&N RR producing points in Tennessee, to points in Missouri.

Grounds for relief: Market competition.

Tariff: Supplement 3 to Southern Freight Association tariff I.C.C. S-171.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 61-10436; Filed, Nov. 1, 1961; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

JEROME L. KLAFF

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: None.
B. Additions: None.

This statement is made as of October 15, 1961.

JEROME L. KLAFF.

OCTOBER 15, 1961.

[F.R. Doc. 61-10449; Filed, Nov. 1, 1961; 8:50 a.m.]

ROGER E. RISLEY

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the past six months.

A. Deletions: None.
B. Additions: None.

This statement is made as of October 26, 1961.

R. E. RISLEY.

OCTOBER 26, 1961

[F.R. Doc. 61-10450; Filed, Nov. 1, 1961; 8:50 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 524 (24 F.R. 9274), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following learner certificates were issued authorizing the employment of ten percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Ann Lee Frocks, 108 South Main Street, Pittston, Pa.; effective 10-31-61 to 10-30-62 (women's cotton and rayon dresses).

J. H. Bonck Co., Inc., 1100 South Jefferson Davis Parkway, New Orleans, La.; effective 10-26-61 to 10-25-62 (men's and boys' sport shirts).

Carthage Shirt Corp., Carthage, Tenn.; effective 11-3-61 to 11-2-62 (men's and boys' dress shirts).

Cowden Manufacturing Co., 124 Apperson Heights, Mt. Sterling, Ky.; effective 10-23-61 to 10-22-62 (men's and boys' work suits and dungarees).

The Formfit Co., Jasonville, Ind.; effective 10-23-61 to 10-22-62 (women's bras and girdles).

Hones Path Shirt Co., Hones Path, S.C.; effective 10-17-61 to 10-16-62 (men's sport shirts).

Lamar Manufacturing Co., Millport, Ala.; effective 10-30-61 to 10-29-62 (men's and boys' dress trousers).

Lansford Apparel Co., West Patterson Street, Lansford, Pa.; effectiye 10-23-61 to 10-22-62 (children's dresses).

Ray Lee, Inc., 1405 Warford Street, Memphis 8, Tenn.; effective 10-19-61 to 10-18-62 (ladies' dresses).

Mylcraft Manufacturing Co., Inc., North Main Plant, Rich Square, N.C.; effective 10-20-61 to 10-19-62 (women's nightwear).

Press Dress and Uniform Co., Hummelstown, Pa.; effective 10-21-61 to 10-20-62 (women's cotton dresses).

Regal Shirt Corp., 125 West Center Street, Millersburg, Pa.; effective 10-26-61 to 10-25-62 (men's dress and sport shirts).

Rob Roy Co., Inc., Cambridge, Md.; effective 11-1-61 to 10-31-62 (boys' shirts).

Royal Manufacturing Co., Inc., Sandersville, Ga.; effective 10-12-61 to 10-11-62 (men's and boys' woven and knitted sport shirts).

Shane Uniform Co., Inc., 2015 West Maryland Street, Evansville 7, Ind.; effective 10-31-61 to 10-30-62 (men's and women's washable uniforms).

Sustan Garments, Inc., Winnsboro, La.; effective 11-1-61 to 10-31-62 (men's and boys' cotton trousers).

Triple A Trouser Manufacturing Co., Inc., 1429-31 Capouse Avenue, Scranton, Pa.; effective 11-1-61 to 10-31-62 (boys' trousers).

Troy Sportswear Co., Inc., 80-90 Second Avenue, Troy, N.Y.; effective 10-18-61 to 10-17-62. Learners may not be employed at special minimum wage rates in the production of suit-coat type jackets and coats (men's sport jackets and suburban coats).

Washington Overall Manufacturing Co., Inc., South Court and Maple Streets, Scottsville, Ky.; effective 10-26-61 to 10-25-62 (men's and boys' trousers).

White Stag Manufacturing Co., Sylvania, Ga.; effective 10-18-61 to 10-17-62. Learners may not be employed at special minimum wage rates in the production of separate skirts (women's active sports clothing).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Anderson Brothers Consolidated Co's. Inc., Floyd and High Streets, Danville, Va.; effective 10-31-61 to 10-30-62; six learners (men's and women's work clothes).

Apco Manufacturing Co., 1109 West 22d Street, Broadhead, Wis.; effective 10-11-61 to 10-10-62; 10 learners (infants' and children's cotton knit polo shirts).

Blain Products, Inc., Blain, Pa.; effective 10-19-61 to 10-18-62; three learners (ladies' pajamas, gowns, sleepcoats, and dusters).

Carolina Garment Co., Jackson Street, Rich Square, N.C.; effective 10-20-61 to 10-19-62; 10 learners (women's nightwear).

J. R. Davis Manufacturing Co., Beaver Springs, Pa.; effective 10-20-61 to 10-19-62; 10 learners (girls' car coats, men's and boys' jackets).

Eugenia Sportswear, 873 Peace Street, Hazleton, Pa.; effective 10-17-61 to 10-16-62; five learners (children's snowsuits).

Ozark Manufacturing Co., Ozark, Ala.; effective 10-19-61 to 7-20-62; 10 learners (ladies' cotton blouses) (replacement certificate).

Schoolhouse Togs, Inc., Rockport, Maine; effective 10-19-61 to 10-18-62; 10 learners (girls' blouses).

Tamaqua Garment Co., Tamaqua Pa.; effective 10-17-61 to 10-16-62; 10 learners (women's street dresses).

Towanda Corset Co., Inc., 200 Main Street, Towanda, Pa.; effective 10-18-61 to 10-17-62; 10 learners (women's girdles and bras).

Trend Trousers, Inc., LaCrosse, Ind.; effective 10-23-61 to 10-22-62; 10 learners (men's dress slacks).

Trend Trousers, Inc., 615 Railroad Avenue, North Judson, Ind.; effective 10-19-61 to 10-18-62; 10 learners (men's dress slacks).

Tritex Sportswear, Inc., 12 Logan Boulevard, Altoona, Pa.; effective 10-18-61 to 10-17-62; 10 learners (car coats and raincoats).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Junior Form Lingerie Corp., Cairnbrook, Pa.; effective 10-25-61 to 4-24-62; 10 learners (lingerie, slips, petticoats, and gowns).

S. A. Kott Co., Belton, S.C.; effective 10-13-61 to 4-12-62; 30 learners (men's sport shirts).

Lavonia Industries, Inc., Lavonia, Ga.; effective 10-20-61 to 4-19-62; 100 learners (house dresses).

Linden Apparel Corp., Factory Street, Plant No. 1, Averett Street, Plant No. 2, Linden, Tenn.; effective 10-23-61 to 4-22-62; 50 learners (men's and boys' pants and dungarees).

Lyn-Gai Garment Co., 207 East Franklin Street, Sesser, Ill.; effective 10-20-61 to 4-19-62; five learners. No learners may be employed at special minimum wage rates in the manufacture of separate skirts (ladies' dusters, slacks, and dresses).

Riviera Sportswear Co., 1207 South Seventh Street, La Crosse, Wis.; effective 10-20-61 to 4-19-62; 100 learners (women's and children's cotton dresses).

Stitchcraft, Inc., 393 Oconee Street, Athens, Ga.; effective 10-18-61 to 4-17-62; 15 learners (children's and toddlers' clothing, women's dresses).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.60 to 522.65, as amended).

Gloversville-Continental Mills, Inc., 1037 Congress Street, Schenectady, N.Y.; effective 10-23-61 to 10-22-62; 10 percent of the total number of factory production workers engaged in the authorized learner occupations for normal labor turnover purposes (dress gloves and mittens).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.43, as amended).

Charles H. Bacon Co., Inc., Loudon, Tenn.; effective 10-21-61 to 10-20-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (Seamless).

Bear Brand Hosiery Co., Fayetteville, Ark.; effective 10-31-61 to 10-30-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Bear Brand Hosiery Co., Henderson, Ky.; effective 10-31-61 to 10-30-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Beaver Hosiery Co., Hickory, N.C.; effective 10-18-61 to 10-17-62; five learners for normal labor turnover purposes (seamless).

Candor Hosiery Mill, Candor, N.C.; effective 10-23-61 to 10-22-62; five learners for normal labor turnover purposes (seamless).

Dumas Hosiery Mills, Inc., Dumas, Ark.; effective 10-18-61 to 4-17-62; five learners for plant expansion purposes (children's hosiery).

Mars Hosiery Co., Inc., Johnston School Road, West Asheville, N.C.; effective 10-18-61 to 5-9-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' full-fashioned hosiery) (replacement certificate).

May Hosiery Mills, 425 Chestnut Street, Nashville, Tenn.; effective 10-16-61 to 10-15-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's and children's seamless hosiery).

Roane Hosiery, Inc., Harriman, Tenn.; effective 10-31-61 to 10-30-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Dri-Set, Inc., Graysville, Tenn.; effective 10-30-61 to 10-29-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (children's sleepwear).

Munsingwear, Inc., Guin, Ala.; effective 10-17-61 to 10-16-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (women's and girls' apparel).

Munsingwear, Inc., Hamilton, Ala.; effective 10-17-61 to 10-16-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (women's and girls' apparel).

Munsingwear, Inc., Little Falls, Minn.; effective 10-18-61 to 10-17-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (T-shirts, briefs and boxer shorts).

Munsingwear, Inc., Montgomery, Minn.; effective 10-17-61 to 10-16-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (T-shirts, briefs ,and sport shirts).

Munsingwear, Inc., Hominy, Okla.; effective 10-17-61 to 10-16-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (T- and athletic shirts).

Munsingwear, Inc., Ashland, Wis.; effective 10-17-61 to 10-16-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's and boys' knitted sleepwear).

Van Raalte Co., Inc., Maple Street, Middlebury, Vt.; effective 10-31-61 to 10-30-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (women's underwear and nightwear).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

Lambert Manufacturing Co., Inc., Gallatin, Mo.; effective 10-23-61 to 4-22-62; four learners for normal labor turnover purposes in the occupation of sewing machine operator for a learning period of 200 hours at the rate of $1.00 an hour (Headwear).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Signed at Washington, D.C. this 24th day of October 1961.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[F.R. Doc. 61-10425; Filed, Nov. 1, 1961; 8:46 a.m.]

CUMULATIVE CODIFICATION GUIDE—NOVEMBER

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